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Tuesday
July 13, 1993

Briefings on How To Use the Federal Register
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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

(two briefings)

WHEN: July 15 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 93–28 of June 25, 1993

Presidential Determination on Haiti Reconstruction and Reconciliation Fund

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 614(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby:

(1) determine that it is important to the security interests of the United States to furnish to Haiti up to $36.4 million in assistance from Development Assistance obligated for Haiti, and under Chapters 4, 5, and 6 of Part II of the Act from Economic Support Funds (ESF) previously allocated for Peru and ESF deobligated from Bolivia, without regard to sections 513 and 518 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391), and sections 620(q) and 660 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), or any other provision of law within the scope of section 614;

(2) determine that it is vital to the national security interests of the United States to furnish up to $918,000 in assistance under section 23 of the Arms Export Control Act from Foreign Military Financing (FMF) funds previously obligated for Haiti and $250,000 in FMF previously obligated for Peru, without regard to section 513, the proviso in section 515(b), and section 518 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102–391), and sections 620(q) and 660 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), or any other provision of law within the scope of section 614; and

(3) authorize the furnishing of such assistance and the making and financing of such sales.

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3, United States Code, and section 621 of the Act, I hereby:

(1) delegate to the Secretary of State the authority conferred upon the President to make determinations under section 610 of the Act for the purpose of transferring ESF funds available for assistance described in paragraph (1) of this determination to, and consolidating such funds with, funds available under Chapters 5 and 6 of Part II of the Act for Haiti; and

(2) authorize the Secretary of State to take any other actions appropriate with respect to such a transfer.

The Secretary of State is hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, June 25, 1993.

[FR Doc. 93–16716
Filed 7–9–93; 3:14 pm]
Billing code 4710–10–M

Editorial note: For the President's Executive order and message to the Congress on further economic sanctions against the current Haiti government, see the *Weekly Compilation of Presidential Documents* (vol. 29, p. 1206).

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC): Emergency Funding Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Supplemental Appropriations Act of 1993, title I, chapter I, enacted on July 2, 1993, provides that for any Fiscal Year 1993 reallocation process, the Secretary may waive the capping provision contained in departmental regulations governing funds allocation for the Special Supplemental Food Program for Women, Infants and Children (WIC) to ensure additional funds are received by States most in need. Accordingly, this rule, effective through September 30, 1993, implements an emergency revision to the food funds allocation formula for (WIC) to allow the allocation of additional funds to certain WIC State agencies which can utilize these funds to serve additional Program participants who would otherwise not be served in Fiscal Year 1993. For the remainder of Fiscal Year 1993 only, this rule will waive the provision which limits any State agency to a 15 percent increase in food funding. This waiver will apply to certain residual funds which remain after application of the current food funds allocation formula. As it would not be in the best public interest to delay the implementation of the provisions of this rule since such delay would prevent the rule from being effective and prevent the Department from allocating the funds needed to serve additional participants in this fiscal year, good cause exists to forego a public comment period.

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2710.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12291, and has been determined not to be major. The Assistant Secretary for Food and Consumer Services does not anticipate that this rule will have an impact on the economy of $100 million or more. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Further, this rule will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Acting Administrator of the Food and Nutrition Service (FNS) has certified that this rule will not have a significant impact on a substantial number of small entities. Some State and local agencies will be most affected because of the additional program administration involved; however, the effect on these entities will be minimal. Additional participants and applicants may be served by the Program, and accordingly would also be affected.

Paperwork Reduction Act

This rulemaking imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Emergency Provision Affecting the Food Funds Allocation Formula

Background

Each fiscal year, once an appropriation is enacted for the WIC Program, funds are allocated to State agencies through funding formulas. Food funds are first allocated for stability grants, which provide State agencies with their prior fiscal year's total food grant adjusted by an inflation factor, and with funds set aside to serve migrant participants. Any funds remaining after the stability food grants are satisfied are classified as residual funds and are allocated equally through targeting and growth components of the funding formula. All States receive targeting funds based on their service to Priority I participants (mainly prenatal women with identified health risks and/or who are at nutritional risk). Growth funds are allocated only to those States which, when compared to other States,

receive less than their equitable share of funds based primarily on the size of their income eligible populations. Census data from 1990, used for the first time in the allocation of Fiscal Year 1993 food growth funds, revealed that certain States are significantly underfunded based on the size of their income eligible populations.

Through the growth component of the funds allocation formula, particular States have already received substantial funding increases in Fiscal Year 1993 and are eligible for further increases from the July reallocation. However, many of these States eligible for growth funds from the July reallocation have declined to accept the full amount of funds which would be provided through the food funding formula. Due to the lateness in the fiscal year, as well as previous rapid caseload expansion, these States do not believe they can effectively utilize additional food funds in Fiscal Year 1993. Therefore, the funds declined by these State agencies are available for reallocation to other States eligible for growth funds which believe they can utilize more funds.

Although these food funds are available for reallocation, the allocation formula has a cap which limits the increase in residual funding that any State may receive from one fiscal year to the next to 15 percent above the level of the stability grant adjusted for inflation. The 15 percent capping provision was implemented to prevent State agencies from receiving funds beyond their growth capacity in one fiscal year. This limitation was also deemed necessary at the time of implementation to assure that residual funds were shared widely among all growth State agencies in need of funds. The result of the cap is to prevent some underfunded growth States willing to accept additional growth funds from receiving these funds in Fiscal year 1993.

The ability of State agencies to handle rapid Program growth efficiently and effectively is variable. Those State agencies which do not presently have space and staff readily available to expand participation are unwilling to accept funds that they may be unable to use, or unable to use in a manner which maintains the quality of service to participants. More importantly, however, some State agencies are able to absorb larger growth allocations than they would otherwise receive under the existing cap.

Justification for Emergency Waiver to the 15 Percent Capping Provision

The Supplemental Appropriation Act of 1993, title I, chapter I, enacted July 2, 1993, provides that for any fiscal year 1993 reallocation process, the Secretary may waive the 15 percent cap regulation to ensure additional funds are received by States most in need. The combination of the large number of growth States declining additional funds and other growth States desiring additional funds, but limited by the 15 percent capping provision, has resulted in an unprecedented complication with the current funds allocation formula. Without a revision to current regulations governing the allocation of food funds, FNS is unable to allocate the available growth funds in Fiscal Year 1993 to maximize the number of WIC participants who can be served in this fiscal year.

Congress was unambiguous about its findings and purpose in creating the WIC Program. As set forth in section 17(a) of the Child Nutrition Act of 1966 (the Act), it found that substantial numbers of pregnant, postpartum and breastfeeding women, and infants and children are from families with inadequate income and are at special risk with respect to their physical and mental health by reason of inadequate nutrition and health care. Section 17(a) further states that the purpose of the WIC Program is to provide supplemental foods and nutrition education to these individuals, "up to the authorization levels set forth in [this Act]."

Without waiving the 15 percent cap, available growth funds will not be optimally utilized in the fiscal year, and participants who could be served within current funding levels will not be served. Waiving the cap will not only maximize allocation of funding and permit the Program to serve more participants, it will do so with minimal disruption to the total Fiscal year 1993 grant levels anticipated by State agencies. In addition to permitting FNS to utilize all allocated Program funds, this modification to the regulations will permit FNS to reduce the severe inequities among State agencies in the percentage of income eligible population served. Moreover, as noted above, the Supplemental Appropriations Act of 1993, title I, chapter I, specifically permits this waiver, thereby ensuring the most effective use of available funds for the purpose of improving nutrition among pregnant, postpartum and breastfeeding women, and infants and children in those States most in need.

In view of the fact that the end of the fiscal year is fast approaching, the Administrator of FNS has determined that this action must be effective immediately in order to result in the effective allocation and utilization of WIC funding in Fiscal Year 1993. The Administrator of FNS has found, therefore, that it would be impracticable and contrary to the public interest to provide for a comment period, and that, accordingly, good cause exists pursuant to 5 U.S.C. 553(b) to waive notice and an opportunity for comment on this action.

Implementation of the Waiver to the 15 Percent Capping Provision

To resolve this issue for the Fiscal Year 1993 July reallocation and any other reallocations for the remainder of this fiscal year, food funds will be allocated through the current food funds allocation formula until the formula fails to allocate remaining available funds. FNS anticipates that these remaining funds will be from the growth component of the residual allocation. Accordingly, the remaining growth funds will be allocated through the growth component of the food funds allocation formula and the 15 percent capping provision will be removed. If any State agency reaches an allocation level beyond the funds it has requested, excess funds will go to State agencies willing to accept more funds. As with all reallocations, these funds will become a permanent part of participating States' stability grants for the next fiscal year.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR Part 246 is being amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 is revised to read as follows:

Authority: Secs. 123 and 213, Pub. L. 101–147, 103 Stat. 877 (49 U.S.C. 1751); sec. 3201, Pub. L. 100–690, 102 Stat. 4181 (42 U.S.C. 1786); sec. 645, Pub. L. 100–460, 102 Stat. 2229 (42 U.S.C. 1786); secs. 212 and 501, Pub. L. 100–435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100–356, 102 Stat. 669 (42 U.S.C. 1786); sec. 8–12, Pub. L. 100–237, 101 Stat. 1733 (42 U.S.C. 1786); sec. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 97–35, 95 Stat. 521 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599 (42 U.S.C. 1786); sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In § 246.16, the introductory text of paragraph (c)(2)(ii) is revised to read as follows:

§ 246.16 Distribution of funds.

* * * * *

(c) * * *

(2) * * *

(ii) *Allocation of residual funds.* Any funds remaining available for allocation for food costs after the allocation of stability food funds required by paragraph (c)(2)(i) of this section has been completed shall be allocated as follows; *Provided however,* That the aggregate amount of such residual funds allocated to any State agency for food costs in any fiscal year shall not exceed 15 percent of the amount of stability funds that would have been allocated to such State agency for food costs in such fiscal year if the inflation factor had been the anticipated rate of inflation as determined by FNS. For any Fiscal Year 1993 reallocation occurring after June 30, 1993, if any growth funds remain after the initial reallocation, either because a State agency has declined to accept those funds, or by operation of the 15 percent restriction in this paragraph, then the 15 percent restriction shall not apply to those remaining funds and such funds shall be allocated as growth funds.

* * * * *

Dated: July 7, 1993.

Christopher J. Martin,

Acting Administrator

[FR Doc. 93–16479 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV93–906–1IFR]

Expenses and Assessment Rate for the Marketing Order Covering Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Texas Valley Citrus Committee (TVCC) under M.O. No. 906 for the 1993–94 fiscal year. Authorization of this budget enables the TVCC to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1993, through July 31, 1994. Comments received by August 12, 1993 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Fax (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda Garza, Marketing Specialist, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906) regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges and grapefruit grown in Texas are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable citrus fruit handled during the 1993–94 fiscal year, beginning August 1, 1993, through July 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Texas orange and grapefruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable citrus fruit handled from the beginning of such year. Annual budgets of expenses are prepared by the TVCC, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to

formulate appropriate budgets. The TVCC's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the TVCC is derived by dividing the anticipated expenses by expected shipments of oranges and grapefruit. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the TVCC's expected expenses.

The TVCC met on May 20, 1993, and on a vote of 11 in favor and four opposed, recommended total expenses for the 1993–94 fiscal year of $984,319 and an assessment rate of $0.15 per 7/10 bushel carton. A motion was made by four TVCC members to lower the assessment rate to $0.12 but the motion failed by the above vote. In comparison, the 1992–93 fiscal year expense amount was $577,200, which is $407,119 less than the recommended $984,319 for this season and the assessment rate has remained unchanged.

Assessment income for the 1993–94 fiscal year is expected to amount to $825,000 based upon estimated fresh domestic shipments of 5.5 million cartons of oranges and grapefruit. Adequate funds exist in the TVCC's reserve to cover budgeted expenses. In comparison, the assessment income for the 1992–93 fiscal year was estimated at $375,000 based upon anticipated fresh domestic shipments of 2.5 million cartons of oranges and grapefruit. Funds in the reserve at the end of the fiscal year, estimated at $170,000, will be within the maximum permitted by the order for one fiscal year's expenses.

Major expense categories for the 1993–94 fiscal year include $110,894 for shared administrative expenses with the South Texas Onion and Melon committees, $723,425 for TexasSweet Citrus Advertising, Inc., compared to $356,700 for the 1992–93 fiscal year, and $150,000 for the Mexican Fruit fly support program.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the TVCC and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The TVCC needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the TVCC begins August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oranges and grapefruit handled during the fiscal year; (3) handlers are aware of this action which was recommended by the TVCC at a public meeting and which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows

Authority: 7 U.S.C. 601–674.

Note: This action will not appear in the annual Code of Federal Regulations.

2. A new § 906.233 is added to read as follows:

§ 906.233 Expenses and assessment rate.

Expenses of $984,319 by the Texas Valley Citrus Committee are authorized and an assessment rate of $0.15 per 7/10 carton on assessable oranges and grapefruit is established for the fiscal year ending July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: July 7, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–16537 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 981

[Docket No. FV93–981–3IFR]

Almonds Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 981 for the 1993–94 crop year. Authorization of this budget enables the Almond Board of California (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning July 1, 1993, through June 30, 1994. Comments received by August 12, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone number 209–487–5901; or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and

has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California almonds are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds handled during the 1993–94 crop year, beginning July 1, 1993, through June 30, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 7,000 producers of California almonds under this marketing order, and approximately 115 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California almond producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 crop year was prepared by the Almond Board of California, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected receipts of California almonds. Because that rate will be applied to handlers' actual receipts, a rate must be established that will provide sufficient income to pay the Board's budgeted expenses.

The Board met May 18, 1993, and recommended by a vote of 8 to 1 a 1993–94 budget of $11,445,000, $950,049 less than the previous year. This amount includes administrative and other expenses of $7,803,454, $2,183,405 more than the previous year, and $3,641,546 for creditable advertising expenditures. Increases in administrative and other expenses include $146,378 for salaries, $13,000 for employee benefits, $17,000 for retirement, $23,400 for payroll taxes, $101,500 for travel, $5,000 for Board travel, $4,000 for research conference, $5,672 for office rent, $4,100 for financial audit, $8,000 for Board insurance, $500 for security, $5,000 for telephone, $2,000 for postage & delivery, $7,000 for office supplies, $6,000 for printing, $1,000 for miscellaneous, $22,000 for newsletter/releases, $10,000 for contingencies, $1,800,000 for promotional activities, $1,500 for crop estimate, and the addition of $15,000 for staff training, $8,000 for equipment rent, $30,000 for contract labor/consultant, $10,000 for utilities, $5,000 for dues and subscriptions, $40,000 for computers and software, and $46,500 for furniture and fixtures. These increases would be partially offset by decreases of $10,000 for meetings, $28,500 for compliance audits and analysis, $25,000 for data processing, $250 for publications, $9,895 for production research, $25,000 for econometric model/analysis, $15,500 for vehicle replacement, $23,000 for office equipment, $10,000 for relocation expenses, and $7,000 for generic packs/promotion for which no funding was recommended.

The Board also recommended by a vote of 8 to 1 an assessment rate of 2.25 cents per kernel pound, the same as last year. The Board also recommended that handlers should be eligible to receive credit for their own authorized marketing promotion (paid advertising) activities for up to 1.00 cent of this 2.25 cents assessment rate, 0.25 cent less than last year. The 1.25 cents per kernel pound portion of the assessment destined for administrative expenses is .25 cent more than last year. Revenues are expected to be $6,175,000 from administrative assessments (494,000,000 pounds @ 1.25 cents per pound), $699,998 from the portion of assessments eligible for credit but received by the Board from handlers who do not obtain credit for their own activities, $30,000 from interest, and $300,000 from the Board's reserve, for a total of $7,204,998. These projections would result in a $598,456 shortfall in revenue based on current estimates of the 1993 crop yield. In light of this projected revenue shortfall, the Board recommended that any shortfall be applied against its generic promotion (paid advertising) activities and that the amount of money spent for these activities be reduced accordingly. However, the Board decided not to reduce the total amount ($5,400,000) estimated for this activity by the amount of the expected shortfall because its assessment revenue projections are conservatively estimated and it expects additional revenue to accrue.

The remaining $3,641,546 of recommended 1993–94 expenses is the estimated amount which handlers are expected to spend and have credited for their own authorized marketing promotion activities during the 1993–94 crop year. Unexpended funds from 1993–94 may be carried over to cover expenses during the first four months of the 1994–95 crop year.

This action will impose the obligation to pay assessments on handlers. The assessments are uniform for all handlers. Some of the assessment cost may be passed on to producers. However, the assessment cost will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Board and other

available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year begins on July 1, 1993, and the marketing order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year; (3) handlers are aware of this action which was recommended by the Board at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 981.340 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 981.340 Expenses and assessment rate.

Expenses of $11,445,000 by the Almond Board of California are authorized for the crop year ending June 30, 1994. An assessment rate for the crop year payable by each handler in accordance with § 981.81 is fixed at 2.25 cents per kernel pound of almonds less any amount credited pursuant to § 981.41, but not to exceed 1.00 cent per kernel pound of almonds.

Dated: July 7, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–16535 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 987

[Docket No. FV93–987–1IFR]

Domestic Dates Produced or Packed in Riverside County, CA; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures of $672,440 and establishes an assessment rate of $1.25 per hundredweight of dates under Marketing Order No. 987 for the 1993–94 crop year. Authorization of this budget enables the California Date Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective October 1, 1993, through September 30, 1994. Comments received by October 12, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kellee J. Hopper, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone number 209–487–5901; or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone number 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended [7 CFR part 987], regulating the handling of dates produced or packed in Riverside County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, California dates are subject to assessments. Funds to administer the California date marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates during the 1993–94 crop year beginning October 1, 1993, through September 30, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 producers of California dates under the marketing order and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration [13 CFR

121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California date producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 crop year was prepared by the California Date Administrative Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California dates. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on May 13, 1993, and unanimously recommended a 1993–94 budget of $672,440, $176,940 more than the previous year. Included in 1993–94 budgeted expenditures is an operating budget of $121,800, $97 more than last year, with a 20 percent surplus account allocation, for a net operating budget of $97,440, or $77 more than last year. Increases include $7,000 for the Executive Director's salary, $1,500 for telephone, $1,500 for travel/mileage, $200 for publications, $500 for professional services—accounting, $182,530 for market promotion, the addition of $15,000 for an administrative assistant, $4,000 for contingencies, $1,000 for an unemployment reserve, and $1,900 for USDA compliance audits. These would be partially offset by decreases of $6,000 for a clerk's salary, $1,000 in health and related benefits, $503 in payroll taxes, and the elimination of $25,000 for an assistant secretary for which no funding was recommended. Also, the Committee recommended no transfer to the market promotion reserve, for which $5,667 was allocated last year.

The Committee also unanimously recommended an assessment rate of $1.25 per hundredweight, $0.15 less than last season. This rate, when applied to anticipated date shipments of 38,000,000 pounds, will yield $475,000 in assessable income. This, along with $5,000 in interest income and $192,440 from the Committee's reserve, will be adequate to cover budgeted expenses. The maximum amount permitted in the Committee's reserve cannot exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. Funds held by the Committee at the end of the crop year, including the reserve, which are in excess of the crop year's expenses may be used to defray expenses for four months and thereafter the Committee shall refund or credit the excess funds to the handlers. The funds in the Committee's reserve were in excess of the maximum permitted by the order. Accordingly, the Committee has credited or refunded each handler's share of the excess funds. Funds in the reserve are now within the maximum permitted by the order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year begins on October 1, 1993, and the marketing order requires that the rate of assessment for the crop year apply to all assessable dates handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 90-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 987.336 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 987.336 Expenses and assessment rate.

Expenses of $672,440 by the California Date Administrative Committee are authorized, and an assessment rate of $1.25 per hundredweight of assessable dates is established for the crop year ending September 30, 1994. Unexpended funds may be carried over as a reserve within the limitations specified in § 987.72 (c) and (d).

Dated: July 7, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–16536 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 92–120–2]

Ports Designated for the Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by designating Tacoma, WA, as a port of embarkation and Pacific Rim Livestock Quarantine as an export inspection facility for that port. Tacoma, WA, and Pacific Rim Livestock Quarantine meet the requirements of the regulations for designation as a port of embarkation and an animal export inspection facility, respectively. We are also removing the listings for three export inspection facilities that are no longer operating and revising the listings for two others that have changed operators or locations. These actions will add a port

of embarkation and an inspection facility through which animals may be processed for export and will update the regulations.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Faizi, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.14(a) contains a list of designated ports of embarkation and export inspection facilities.

In a document published in the **Federal Register** on January 5, 1993 (58 FR 262–264, Docket No. 92–120–1), we proposed to amend § 91.14(a) of the regulations by designating Tacoma, WA, as a port of embarkation and Pacific Rim Livestock Quarantine as an export inspection facility for that port. We also proposed to remove the listings for three export inspection facilities that had ceased operations and revise the listings for two others that had changed operators or locations.

We solicited comments on the proposed rule for a 30-day period ending February 4, 1993. We did not receive any comments. Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Currently, the State of Washington is served by designated ports of embarkation in Seattle, Olympia, and Moses Lake. Adding Tacoma as a fourth port of embarkation for the State of Washington will facilitate the export of animals from this part of the United States. We believe that adding this fourth port of embarkation will have little or no economic impact on animal exporters, the majority of which are small businesses, because it will not significantly change the cost of doing business. Although animal exporters based in the Tacoma area will realize some savings from reduced transportation costs, the primary impact on these animal exporters will be the increased convenience of having an additional port of embarkation from which to choose. The three export inspection facilities that we are deleting from the list have already ceased operating as animal export inspection facilities, so their deletion from the regulations will have no economic impact. The port of embarkation at John F. Kennedy International Airport, located approximately 60 miles south of Newburgh, NY, is available to animal exporters who had used the Stewart Airport animal export inspection facility. Similarly, animal exporters who used the Northwest Quarantine Station in Portland, OR, may use the animal export inspection facility located at the port of Olympia, WA, approximately 150 miles to the north. Animal exporters in Seattle, WA, still have a local animal export inspection facility available, despite the closing of S&W Export Ltd.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. Section 91.14 is amended as follows:

a. Paragraph (a)(10)(i) is removed and paragraph (a)(10)(ii) is redesignated as paragraph (a)(10)(i).

b. In newly designated paragraph (a)(10)(i)(A), the word "ASPCA" is removed and the words "Vetport, Inc." added in its place.

c. Paragraph (a)(13) is removed and paragraphs (a)(14) through (a)(17) are redesignated as paragraphs (a)(13) through (a)(16).

d. Newly designated paragraph (a)(16)(ii)(A) is removed, and paragraph (a)(16)(ii)(B) is redesignated as paragraph (a)(16)(ii)(A) and is revised as set forth below.

e. New paragraphs (a)(16)(iv) and (a)(16)(iv)(A) are added as set forth below.

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(16) * * *

(ii) * * *

(A) Stevedoring Service of America, 3415 11th Avenue SW., Seattle, WA 98134, (800) 422–3505.

* * * * *

(iv) Tacoma—airport and ocean port.

(A) Pacific Rim Livestock Quarantine, 17835 Highway 507 SE., Yelm, WA 98507, (206) 458–1762.

* * * * *

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16533 Filed 7–12–93; 8:45 am]

BILLING CODE 3410-34-P

9 CFR Part 92

[Docket No. 91-187-2]

Cattle From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing calves at least 5 days but not more than 4 weeks of age to be imported from Canada into the United States without being tested for tuberculosis. This will expedite the international movement of the calves by allowing them to be transported upon demand, exempt from the requirement to be tested for tuberculosis and wait 72 hours for test results prior to importation into the United States. We are taking this action because the low incidence of tuberculosis in Canadian cattle does not justify the cost of testing such young animals. Moreover, this relaxed restriction will have the humane effect of reducing the amount of stress borne by calves in transit.

Further, by deleting outdated provisions concerning the port-of-entry detention of cattle from Canada that do not meet our import requirements, we are bringing the regulations into conformity with current practice.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Vogt, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 767, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation of cattle from Canada to prevent the introduction into the United States of communicable diseases of livestock.

On December 31, 1992, we published in the **Federal Register** (57 FR 62501-62502, Docket No. 91-187-1) a proposal to amend the regulations by allowing calves younger than 4 weeks of age to be imported from Canada into the United States without being tested for tuberculosis.

In addition, we proposed to remove from § 92.418(a) the obsolete provision for the "detention at port of entry" of cattle inspected and found not qualified for immediate entry into the United States, and to remove the redundant footnote in the "Cattle from Canada" section heading.

We solicited comments concerning our proposal, for a 60-day comment period ending March 1, 1993. We received 1 comment by that date.

The commenter supported the proposed rule, but suggested that we establish a minimum age limit of between 5 and 8 days for calves imported into the United States from Canada. The commenter stated that this change would minimize morbidity and mortality and generally contribute to the calves' welfare. We agree, and are amending the regulations in § 92.418(b)(2)(ii)(C) to provide that calves imported into the United States from Canada be at least 5 days old.

Therefore, with the change discussed in this document, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

According to the most recent figures available (1990), approximately 44,000 calves younger than four weeks are imported from Canada into the United States annually, mostly for the production of veal. The market for these calves, which represent less than one-tenth of a percent of the total calf population in the United States, is extremely limited.

This rule will directly affect 10 entities that import calves from Canada. Nine of the ten are small entities. The single entity that is considered large accounted for 80 percent of the imports in 1990.

The change benefits all importers of young calves from Canada, who will be relieved of the costs incurred in testing the calves. Currently, the required tuberculin test, labor, feed, and retaining services amount to about $8 per animal. Further, young calves periodically die as a result of stress in the waiting stations where they remain for 72 hours. Death losses of imported young calves averaged 8 percent between 1976 and 1990, a death rate double that of U.S. calves. The value of an imported young calf (live) is about $170. Therefore, the small entities that import young calves from Canada will accrue only modest benefits from the proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.).*

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Part 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR part 92 is amended as follows:

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.418, the section heading is amended by removing the reference to footnote 7; in paragraph (a), the heading and the last sentence are revised; paragraph (b)(2)(ii)(C) is redesignated as paragraph (b)(2)(ii)(D); and a new paragraph (b)(2)(ii)(C) is added, to read as follows:

§ 92.418 Cattle from Canada.

(a) *Health certificates.* * * * Cattle found unqualified upon inspection at the port of entry will be refused entry into the United States.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(C) That the cattle are at least five days but not more than four weeks of age and, therefore, exempt from the tuberculosis testing requirement; or

* * * * *

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-16531 Filed 7-12-93; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 92

[Docket No. 92-103-2]

Ports Designated for Importation of Birds and Poultry; Port Canaveral, FL

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products by adding Port Canaveral, FL, to the list of ports designated for the importation of pet birds, performing or theatrical birds, performing or theatrical poultry, and certain other poultry and poultry products, such as poultry test specimens, or hatching eggs and day old chicks, which do not appear to require restraint and holding facilities. This action will provide an alternative port of entry for these birds and poultry, and poultry products, thereby facilitating their importation into the United States.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5097.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) contain, among other things, provisions concerning the importation of birds and poultry into the United States. These provisions are designed to prevent the introduction of exotic Newcastle disease and other communicable diseases of poultry into the United States.

Section 92.102(a) lists special ports designated for the importation of pet birds imported under the provisions of § 92.101(c)(3). Section 92.203(d) designates limited ports available for the entry of poultry and poultry products, such as poultry test specimens, or hatching eggs and day old chicks, which do not appear to require restraint and holding facilities. In accordance with § 92.101(f), performing or theatrical birds may be imported at any of the ports of entry listed in § 92.102 or § 92.203, and, in accordance with § 92.201(c), performing or theatrical poultry may be imported at any of the ports of entry listed in § 92.203.

On January 14, 1993, we published in the **Federal Register** (58 FR 4362-4363, Docket No. 92-103-1), a proposal to add Port Canaveral, FL, to the list of ports in §§ 92.102(a) and 92.203(d).

Comments on the proposed rule were required to be received on or before February 16, 1993. We did not receive any comments. Therefore, based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will affect owners of pet birds, performing or theatrical birds, performing or theatrical poultry and certain other poultry and poultry products, imported into the United States. This rule will benefit them by providing an alternative port of entry. The convenience this alternative port will provide will not result in any significant economic benefit. Further, we do not expect that this rule will result in any increase in the number of these birds and poultry, and poultry products, imported into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51 and 371.2(d).

§ 92.102 [Amended]

2. In § 92.102, paragraph (a) is amended by adding "and Port Canaveral" immediately after "Miami".

§ 92.203 [Amended]

3. In § 92.203, paragraph (d) is amended by adding "Port Canaveral," immediately after "Jacksonville,".

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-16532 Filed 7-12-93; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 98

[Docket No. 92-128-2]

Importation of Certain Animal Semen

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of certain animal semen by: adding a provision requiring that all imported animal semen be accompanied by a health certificate; restoring the

exemption from the requirement for an import permit for animal semen being imported into the United States from Canada through a land border port; and restoring the list of ports of entry so that it includes all of the ports designated for the importation of animal semen into the United States. These actions will help to prevent disease from entering the United States and correct omissions that resulted from a reorganization of the regulations.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in "Subpart C—Certain Animal Semen" of 9 CFR part 98 (referred to below as "the regulations") concern the importation of certain animal semen into the United States.

In a document published in the **Federal Register** on January 5, 1993 (58 FR 266–269, Docket No. 92–128–1), we proposed to amend the regulations by requiring that all imported animal semen be accompanied by a health certificate; restoring the exemption from the requirement for an import permit for animal semen being imported into the United States from Canada through a land border port; and restoring the list of ports of entry so that it includes all of the ports designated for the importation of animal semen into the United States.

We solicited comments on the proposed rule for a 30-day period ending February 4, 1993. We received two comments, one from a veterinary medical association and one from a horse industry group. Both comments offered support for the proposed rule.

One of the commenters did point out, however, that in proposed § 98.35(d)(2), we require that the health certificate state the name and address of the veterinarian who collected the semen. The commenter correctly noted that the current regulations do not require that a veterinarian collect the semen. We agree that it is not necessary for a veterinarian to personally collect the semen, although for the purposes of the health certificate it is necessary for a veterinarian to supervise its collection. Therefore, we have revised § 98.35(d)(2) to require that the name and address of the veterinarian who supervised the collection of the semen appear on the health certificate.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule with the one change noted above.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The provisions of this rule will have little or no economic effect. The requirement for a health certificate to accompany each shipment of animal semen being imported into the United States will not have any significant impact on importers. The health certificate will not require any additional tests or examinations to be conducted on the donor animal; rather, the health certificate will merely document the identification, collection, and examination activities that are already required by the regulations. The remainder of the changes are either non-substantive in nature or simply restore language that was mistakenly omitted from the regulations. Therefore, this rule will have little or no economic impact on importers of animal semen because it will not significantly increase or decrease the cost of doing business.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this rule will be submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 98

Animal diseases, Imports.

Accordingly, we are amending 9 CFR part 98 as follows:

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

1. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 98.31 [Amended]

2. In § 98.31, the words "this part" are removed and the words "this subpart" are added in their place, both times the words appear.

3. Section 98.33 is amended by revising the section heading, redesignating paragraph (a) as paragraph (d) and revising it, redesignating paragraph (b) as paragraph (e), and adding new paragraphs (a), (b), and (c) to read as follows:

§ 98.33 Ports designated for the importation of certain animal semen.

(a) *Air and ocean ports.* The following air and ocean ports are designated as having inspection facilities for the entry of animal semen: Los Angeles, California; Miami, Florida; Honolulu, Hawaii; and Newburgh, New York.

(b) *Canadian border ports.* The following land border ports are designated as having inspection facilities for the entry of animal semen from Canada: Eastport, Idaho; Houlton and Jackman, Maine; Detroit, Port Huron, and Sault Ste. Marie, Michigan; Opheim, Raymond, and Sweetgrass, Montana; Alexandria Bay, Buffalo, and Champlain, New York; Dunseith, Pembina, and Portal, North Dakota; Derby Line and Highgate Springs, Vermont; Blaine, Lynden, Oroville, and Sumas, Washington.

(c) *Mexican border ports.* The following land border ports are designated as having inspection facilities for the entry of animal semen from Mexico: Douglas, Naco, Nogales, San Luis, and Sasabe, Arizona; Calexico and San Ysidro, California; Antelope Wells, Columbus, and Santa Teresa, New Mexico; Brownsville, Del Rio.

Eagle Pass, El Paso, Hidalgo, Laredo, and Presidio, Texas.

(d) *Limited ports.* The following limited ports are designated as having inspection facilities for the entry of animal semen: Anchorage and Fairbanks, Alaska; San Diego, California; Denver, Colorado; Jacksonville, St. Petersburg-Clearwater, and Tampa, Florida; Atlanta, Georgia; Chicago, Illinois; New Orleans, Louisiana; Portland, Maine; Baltimore, Maryland; Boston, Massachusetts; International Falls and Minneapolis, Minnesota; Great Falls, Montana; Portland, Oregon; San Juan, Puerto Rico; Galveston and Houston, Texas; Seattle, Spokane, and Tacoma, Washington.

* * * * *

§ 98.34 [Amended]

4. In § 98.34, paragraph (a)(1), the designations "§§ 98.26, 98.27, and 98.28," are removed and the designation "§ 98.36," is added in their place.

§ 98.35 [Amended]

5. In § 98.35, paragraph (a), the words "this part" are removed and the words "this subpart" are added in their place.

6. In § 98.35, the section heading is revised and paragraphs, (c) and (d), are added to read as follows:

§ 98.35 Declaration, health certificate, and other documents for animal semen.

* * * * *

(c) All animal semen offered for importation into the United States shall be accompanied by a health certificate issued by:

(1) A full-time salaried veterinarian of the national government of the country of origin; or

(2) Any veterinarian authorized by the national government of the country of origin, provided that the health certificate is endorsed by a full-time salaried veterinarian of the national government of the country of origin.

(d) The health certificate must state:

(1) The name and address of the place where the semen was collected;

(2) The name and address of the veterinarian who supervised the collection of the semen;

(3) The date of semen collection;

(4) The identification and breed of the donor animal;

(5) The number of ampules or straws covered by the health certificate and the identification number or code on each ampule or straw;

(6) The dates, types, and results of all examinations and tests performed on the donor animal as a condition for importing the semen;

(7) The names and addresses of the consignor and consignee; and

(8) That the semen is being imported into the United States in accordance with subpart C of 9 CFR part 98.

7. Section 98.36, including the undesignated center-heading "CANADA [3]", is revised, and footnote 3 removed, to read as follows:

Canada

§ 98.36 Import permit, declaration, and health certificate for animal semen.

(a) For animal semen intended for importation from Canada, the importer shall first apply for and obtain from APHIS an import permit as provided in § 98.34: *Provided*, that an import permit is not required for animal semen offered for entry at a land border port designated in § 98.33(b) if the donor animal:

(1) Was born in Canada or the United States, and has been in no country other than Canada or the United States; or

(2) has been legally imported into Canada from some other country and unconditionally released in Canada so as to be eligible to move freely within that country without restriction of any kind and has been in Canada after such release for 60 days or longer.

(b) For all animal semen offered for importation from Canada, the importer or his or her agent shall present two copies of a declaration and a copy of a health certificate as provided in § 98.35.

§§ 98.37 through 98.39 [Removed]

8. The undesignated center-headings "Countries of Central America and West Indies [4]" and "Mexico [5]", §§ 98.37 through 98.39, and footnotes 4 and 5 are removed.

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-16538 Filed 7-12-93; 8:45 am]

BILLING CODE 3410-34-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Final Rule and Rule Amendments Concerning Composition of Various Self-Regulatory Organization Governing Boards and Major Disciplinary Committees

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted a rulemaking which implements the statutory directives of sections 5a, 8c and 17 of the Commodity Exchange Act ("Act") as they were amended by section 206 of the Futures Trading Practices Act of 1992 ("1992 Act"). This rulemaking establishes various requirements with respect to the composition of self-regulatory organization ("SRO") governing boards and major disciplinary committees. In general, section 206 requires a greater diversity of representation of SRO governing boards and disciplinary committees in order to promote the public interest in the self-regulatory process.

DATES: The following are the effective dates of this rulemaking's various provisions: the amendment to § 1.41(d) is effective July 13, 1993; the amendment to § 1.63 is effective August 12, 1993; § 1.64 is effective July 13, 1993; and, § 1.67 is effective August 12, 1993.

SRO rules complying with § 1.64 must have been submitted to and allowed to become effective by the Commission by October 12, 1993. Each SRO must comply with § 1.64(a), (b)(1), (c) and (d) immediately upon the Commission allowing the SRO's implementing rules to become effective. Each SRO must comply with § 1.64(b)(2) and (c) as of the date of its next governing board election.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 12, 1993, the Commission published for public comment in the **Federal Register** a proposed new Regulation 1.64 and proposed amendments to existing § 1.63.[1] The new regulation and regulation amendments were proposed in response to the statutory directives set forth in section 206 of the 1992 Act.[2] Section 206 of the 1992 Act amended the Act to require that the Commission establish various standards with respect to the composition of SRO governing boards and major disciplinary committees. Previously, the Act had not directly imposed any standards for service on such SRO deliberative bodies.[3]

[1] 58 FR 13565 (March 12, 1993).

[2] Pub. L. 102-546, section 206, 106 Stat. 3590 (1992).

[3] Commission Regulation 1.63, which imposes service standards for SRO governing boards, disciplinary committees and arbitration panels, was

The Commission received eleven written comments in response to the proposed rulemaking. The commenters included seven contract markets (Chicago Board of Trade ("CBT"), Chicago Mercantile Exchange ("CME"), Coffee Sugar & Cocoa Exchange, Inc. ("CSC"), Commodity Exchange, Inc. ("COMEX"), New York Cotton Exchange, Inc. ("NYCE"), New York Futures Exchange, Inc. ("NYFE") and New York Mercantile Exchange ("NYMEX"), a registered futures association (National Futures Association ("NFA")), a clearing organization (Board of Trade Clearing Corporation ("BOTCC")), a commodity industry trade association (Managed Futures Association ("MFA")) and a company which has a commercial interest in a commodity underlying a futures contract (Sunkist). The comments received on particular aspects of the proposed rulemaking are discussed below in the context of the specific rule provision to which they pertain. The Commission has carefully reviewed each of these comments and, based upon that review and its reconsideration of the proposed rulemaking, is now adopting rules which it believes are responsive to the concerns raised by commenters and the statutory objectives of this rulemaking.

II. Description of Proposed Rulemaking

A. Composition Requirements

1. Definition of SRO

a. *Proposed regulation.* In compliance with section 206 of the 1992 Act, the Commission proposed a new Commission § 1.64 which would impose various composition requirements on SRO governing boards and major disciplinary committees. In proposing § 1.64, the Commission pointed out that section 206(a) amended section 5a of the Act to establish composition requirements for the governing board of each "contract market's board of trade" and for the major disciplinary committees of each "contract market."[4] The Commission interpreted section 206(a) to mandate composition requirements for each futures exchange (*i.e.*, board of trade) but not for clearing organizations.

Although the Commission proposed that § 1.64's composition requirements be limited to the governing boards and major disciplinary committees of exchanges and registered futures associations, it also invited comment as to whether any or all of the requirements of proposed § 1.64 should apply to the governing boards and major disciplinary committees of clearing organizations.

b. *Comments received.* The BOTCC and CSC both commented that clearing organizations should not be considered SROs for the purposes of § 1.64 and that, accordingly, § 1.64's composition requirements should not apply to clearing organization governing boards and major disciplinary committees. The BOTCC particularly noted that "neither section 206 nor the legislative history of the 1992 Act suggests in any respect that Congress intended rules implementing the provisions of section 206 to apply to clearing organizations."

The Commission also received comments from the CME and NYMEX that clearing organizations which are divisions of futures exchanges (*e.g.*, CME and NYMEX Clearing Houses) rather than separate legal entities (*e.g.*, BOTCC) should not be included within the definition of SRO for purposes of § 1.64. NYMEX, for instance, contends that its Clearing House functions exactly as a separately-incorporated clearing organization does for other futures exchanges and that, accordingly, both separately-incorporated and integrated clearing organizations should be outside the scope of § 1.64.

c. *Regulation 1.64(a)(1).* The Commission has considered these comments and the pertinent aspects of section 206 and its legislative history and has determined to not include clearing organizations within § 1.64(a)(1)'s definition of SRO. The Commission notes that Section 206 does not explicitly apply to clearing organizations, and neither did the House and Senate bills which were the predecessors to the 1992 Act (H.R. 707, 102d Cong., 1st Sess. (1991) and S. 207, 102d Cong., 1st Sess. (1991)). The Senate bill's legislative history, in fact, indicates that a nearly identical provision in the Senate bill was not to be imposed on clearing organizations but that "contract markets should consider applying the principles of [the provision] to their clearinghouses and other bodies in appropriate cases to engender public confidence in the integrity and openness of exchange decisionmaking." S. Rep. No. 102–22, 102d Cong., 1st Sess., 38 (1991).

The Commission also concurs with the comments of the CME and NYMEX and will not extend the requirements of § 1.64 to those clearing organizations which are divisions of futures exchanges rather than separate legal entities. The Commission believes that this approach is consistent with Congress' intent to excuse clearing organization decisionmaking bodies from the standards of section 206 of the 1992 Act. This approach would not affect the governing board composition requirements of § 1.64 which fully apply to each futures exchange governing board regardless of whether the exchange does or does not have a clearing organization division. The only bodies which are affected are major disciplinary committees which deal with clearing organization disciplinary matters at exchanges with a clearing organization division.

The Commission expects that the only SRO major disciplinary committees which would not be subject to § 1.64's composition requirements are those committees at futures exchanges with clearing organization divisions which deal with violations of clearing organization rules. At the present time, there are three futures exchanges which use clearing organization divisions rather than a separately incorporated clearing organization—the CME, Minneapolis Grain Exchange ("MGE") and NYMEX. Based upon their present rulebooks, disciplinary committees at the CME, MGE and NYMEX are excused from § 1.64(c)'s composition requirements whenever they deal with disciplinary matters concerning CME's Chapter 9 rules, MGE's Chapter 21 rules and NYMEX's Chapter 9 rules, respectively. These rules principally address margin, reporting and various financial requirements for clearing members. If a disciplinary committee at one of these exchanges has jurisdiction over both clearing organization and non-clearing organization rule violations, the committee must comply with Regulation 1.64(c) when considering the non-clearing organization matter.[5]

2. Governing Board Diversity Standards

a. *Proposed regulation.* As originally proposed, Commission Regulation 1.64(b)(1) required each SRO to implement rules requiring that its governing board be comprised of persons from a variety of membership interests who would meaningfully represent the diverse interests of the SRO's members. In describing proposed § 1.64(b)(1) the Commission stated that each SRO should establish, by rule, some fixed form of categorical representation which would ensure that the various interests which could be

promulgated by the Commission pursuant to the general rulemaking authority of section 8a(5) of the Act. See 55 FR 7864 (March 5, 1990).

[4] Section 206(b) similarly amended section 17 of the Act to establish composition requirements for the governing board and major disciplinary committees of each registered futures association.

[5] This assumes that the disciplinary committee otherwise is within § 1.64(a)(2)'s definition of a major disciplinary committee. See Section II.A.5., below, for a discussion of this definition.

affected by the decisionmaking of an SRO governing board would be fairly represented on the board.

b. *Comments received.* The CBT commented that the Commission in adopting Regulation 1.64(b)(1) should clarify that complying SROs would not be required to establish a quota system for representation on their governing boards. In addition, the CME contended that the diversity standards in the 1992 Act were sufficiently clear so that it was not necessary for the Commission to act in this regard.

c. *Section 1.64(b)(3).*[6] Final § 1.64(b)(3) has been revised to state that SROs must establish their diversity standards pursuant to standards and procedures.[7] Regulation 1.64(b) requires that such SRO standards and procedures for meeting the composition requirements of section 206 of the 1992 Act must ensure that the governing board will fairly represent the diversity of membership interest at such SRO.[8] The Commission stresses that § 1.64(b)(3) does not necessarily require that each SRO's standards and procedures establish either a quota system or proportional representation for the different types of membership interests which must be represented on its governing board. However, such standards and procedures must provide for some representation of each enumerated membership interest and describe the manner in which the SRO's diversity of membership interests will be meaningfully represented on the board. The Commission believes that the application of § 1.64(b)(3) will provide each SRO with sufficient flexibility to structure its governing board so that it is reflective of all of its members. In particular, each SRO must take into account the premise of section 206 of the 1992 Act that non-floor interests have a role in the governing and regulatory process at the SRO.

The Commission seeks to clarify that this and all of § 1.64's composition requirements for SRO governing boards are intended to apply to the composition of a full SRO governing board and not to the composition at any one board meeting. Accordingly, SROs are not required to reconstitute their boards each time they meet because certain board members are absent, provided that all board members are properly notified of each board meeting.

Although section 206 of the 1992 Act did not specifically require that the Commission adopt an implementing regulation with respect to diversity standards for SRO governing boards, the Commission believes that such a regulation is necessary. For instance, section 206 only provides a list of what membership interests shall be represented on a contract market board and does not specify at all the types of membership interests which should be represented on registered futures association boards. Both of these issues are addressed in final § 1.64. In addition, § 1.64(b)(3) as adopted ensures that the Commission will be able to review each SRO's implementing standards and procedures and thus enhance the Commission's ability to enforce the requirements of section 206.

3. Governing Board Non-Member Representatives

a. *Proposed regulation.* As proposed by the Commission, § 1.64(b)(2) required each SRO to adopt a rule requiring that at least 20% of the members of its governing board be non-member representatives who are capable of contributing to the board's deliberations consistent with section 206 of the 1992 Act. Proposed § 1.64(b)(2) established a two-part test for who could qualify as such a representative. First, the person would generally have to be knowledgeable of futures trading or financial regulation. Second, the person could not have certain commodity industry affiliations. Proposed § 1.64(b)(2)(ii) specified that the non-member representative must not have been a Commission registrant or SRO member within the prior year. In addition, the non-member representative must not have received more than ten percent of his income for the prior year as compensation for work done for any particular SRO, SRO member or Commission registrant.

b. *Comments received.* The commenters generally criticized proposed § 1.64(b)(2) as establishing criteria that were too narrow in delineating what constitutes a non-member under section 206 of the 1992 Act. CME, COMEX and NFA particularly commented that the restriction on registrants serving as non-member representatives would exclude non-contract market member FCMs, IBs, CPOs, CTAs and APs whose primary interest may be in having fair and efficient markets for their customers.

The CME contended that the qualifications for non-member representatives to SRO boards should be limited strictly to persons who are non-members of the SRO with the requisite expertise in futures trading or other eminent qualifications.

The CBT commented that requiring that a governing board non-member representative not have been an SRO member for the past year exceeded Congress' intent and should be limited to persons who are not current SRO members. In addition, NFA urged that § 1.64(b)(2) be revised to provide that not less than twenty percent of an SRO's governing board be comprised of persons who are not members of the particular SRO, rather than of any SRO.

CME, NFA and NYMEX each commented that the proposed exclusion of persons who earned over ten percent of their income from an industry-affiliated entity was not necessary. NYMEX added that if any such compensation qualification for SRO employment was kept, the Commission should excluded compensation for service on SRO governing boards and for non-full-time employment.

c. *Regulation 1.64(b)(1).*[9] upon its review of the comments, the Commission has decided to alter § 1.64(b)(1) in several respects. Final § 1.64(b)(1) will require, as did the proposed version, that twenty percent or more of the regular voting members of each SRO governing board[10] be comprised of persons who "are knowledgeable of futures trading or

[6] Proposed § 1.64(b)(1) has been renumbered Regulation 1.64(b)(3).

[7] Final § 1.64(b)(1) and (2) similarly require that SROs submit standards and procedures implementing the governing board composition requirements regarding non-member and commercial interest representatives, respectively. Each SRO's conforming standards and procedures must be submitted to the Commission for its review pursuant to section 5a(a)(12)(A) of the Act and § 1.41 or, in the case of a registered futures association, pursuant to section 17(j) of the Act.

[8] Final § 1.64(a)(4) defines what constitutes a "membership interest" for both contract markets and registered futures associations. Section 1.64(a)(4)(i) defines the following as separate membership interests at each contract market:

(A) floor brokers,

(B) floor traders,

(C) futures commission merchants,

(D) producers, consumers, processors, distributors, and merchandisers of commodities traded on the particular contract market,

(E) participants in a variety of pits or principal groups of commodities traded on the particular contract market; and,

(F) other market users or participants . . .

For the purposes of § 1.64(b)(3)'s governing board composition requirements, § 1.64(a)(4)(ii) defines the following as separate membership interests at each registered futures association:

(A) futures commission merchants [("FCMs")],

(B) introducing brokers [("IBs")],

(C) commodity pool operators [("CPOs")],

(D) commodity trading advisors [("CTAs")]; and,

(E) associated persons [("APs")].

Of course, SROs may choose to recognize additional types of membership interests at their particular SRO.

[9] Proposed § 1.64(b)(2) has been renumbered as § 1.64(b)(1).

[10] Section 1.64(a)(3) defines a "regular voting member of a governing board" to mean "any person who is eligible to vote routinely on matters being considered by the board and excludes those members who are only eligible to vote in the case of a tie vote by the board."

financial regulation or are otherwise capable of contributing to governing board deliberations."

In setting the additional qualifications for non-member board representatives, the Commission has determined to exclude persons who are currently salaried employees of the SRO, as well as persons who primarily perform services for SRO in capacity other than as a member of that SRO's governing board.[11]

Section 1.64(b)(1) further provides that a person who serves on an SRO governing board will not be precluded from qualifying as a non-member of that SRO solely because of such service. This provision addresses the situation of non-member representatives to SRO governing boards who might otherwise become ineligible to serve as non-member representatives because of their board service.

The Commission agrees with the commenters that the proposed restriction on Commission registrants and their employees becoming non-member representatives to SRO governing boards would have excluded an important class of persons who have an expertise in futures trading, are significant users of the markets and are not necessarily closely aligned with any particular membership interest at a given SRO. Accordingly, under final § 1.64(b)(1), registration, in itself, will not render a person ineligible to serve as a non-member representative to an SRO governing board.

The Commission, however, has determined to retain § 1.64(b)(1)'s basic restriction on SRO members and their employees becoming non-member board representatives. As adopted, Commission § 1.64(b)(1)'s definition of an SRO non-member excludes persons who are members of the SRO and persons who are "officers, principals or employees of a firm which holds a membership at the [SRO] either in its own name or through an employee on behalf of the firm." The Commission believes that this approach to SRO members and their related officers, principals and employees is consistent with section 206's goal of ensuring that there always will be a twenty percent segment of each SRO governing board which will not have an exclusively member perspective.[12]

While § 1.64(b)(1)'s non-member representation requirements are based on the statutory directive of section 206 of the 1992 Act, neither section 206 nor any other provision of the 1992 Act defined "non-member." Section 404 of the 1992 Act, however, defines a contract market member as being "an individual, association, partnership, corporation, or trust owning or holding membership in, or admitted to membership representation on a contract market or given members' trading privileges thereon." The Commission believes that CME's suggestion that Commission § 1.64(b)(1) treat any person who is an employee of a member of a given SRO as a non-member of that SRO would have unsatisfactory results and would be inconsistent with the fundamental intent of section 206. For example, under CME's approach, a person working for a firm which owned a membership at an SRO, could qualify as a non-member representative to the SRO's governing board regardless of how intimately involved the person was in the firm's operations at the SRO, so long as the person did not personally hold a membership or trading privileges at the SRO. While such a person would not be a "member" under section 404 of the 1992 Act, the Commission believes that it would be unreasonable to conclude that such a person could serve on an SRO board independent of his or her employing member's interests.

After full consideration of this issue, the Commission has concluded that there is no principled regulatory scheme which could effectively and reliably distinguish between employees of a member of an SRO who could and could not be expected to serve as independent and contributing non-member representatives to that SRO's governing board. The Commission believes that this view is consistent with the basic tenet of agency law that an agent's acts or knowledge may be imputed to its controlling principal. This notion is codified in section 2(a)(1)(A)(iii) of the Act which states that the "act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person."[13]

The Commission seeks to clarify that § 1.64(b)(1) requires that there be a minimum of twenty percent non-SRO member representation on SRO governing boards. Any SRO composition scheme which was less than twenty percent representation for non-SRO members would be inconsistent with the 1992 Act and this provision. For example, an SRO governing board of seventeen persons must have at least four non-member representatives. This is required although, in fact, three non-members, constituting 17.6% of such a board, may be closer to twenty percent than four non-members, constituting 23.5% of such a board.[14]

4. Governing Board Commercial Interest Representatives

a. *Proposed regulation.* As proposed, Commission § 1.64(b)(3) stated that each contract market must adopt a rule which requires that at least ten percent of the regular voting members of its governing board be comprised of persons who primarily produce, manufacture, process, export, merchandise or commercially use any of the commodities underlying a futures product traded on that contract market. Like the other SRO board composition requirements of proposed § 1.64, the requirement for representation of commercial interests on contract market governing boards was intended to ensure effective representation for all market participants in each contract market's decisionmaking process.

b. *Comments received.* The CSC commented that commercial interest representatives should include not only individuals but also employees of corporations or other commercial entities. The CSC also contended that section 206 of the 1992 Act only imposes the ten percent requirement where the Commission determines that such a requirement is applicable and that, accordingly, the Commission should determine which contract markets need commercial representation on their governing boards.

Sunkist supported § 1.64(b)(3) and its general intent of providing market

[11] In deciding whether a person primarily performs services for an SRO, the SRO should exclude any person who spends over half of his or her working time providing services to that particular SRO, regardless of the compensation arrangement.

[12] The Commission may refine the parameters of what constitutes a non-member under § 1.64(b)(1), however, if the SRO's implementation of this provision does not ensure that each SRO governing board has a segment of representatives which can act independent of membership interests at that SRO.

[13] The NYCE has suggested that § 1.64(b)(1) require that each SRO governing board include twenty percent non-SRO members, with at least one-third of that segment being neither officers, principals or employees of an SRO member. This approach would not ensure that there be a twenty percent segment of each board which will be independent of any membership interest perspective.

[14] The Commission notes that in addition to its obligations under § 1.64(b)(1), each SRO has an independent obligation to comply with the prohibitions on voting by interested governing board members as established by section 217 of the 1992 Act and any Commission regulation promulgated thereunder.

participants with representation on SRO governing boards. It pointed out that western citrus interests are not currently represented on NYCE's governing board and that the Commission's proposal might help to ensure fair representation for such interests.

c. *Section 1.64(b)(2).*[15] In response to CSC's comment, final § 1.64(b)(2) clarifies that its ten percent commercial interest representative requirement may be met by "persons representing" the appropriate businesses.

In further response to CSC, the Commission notes that section 206's and § 1.64(b)(2)'s references to having commercial interest representation "where applicable" provides discretion as to an SRO's choice of an appropriate type of enumerated commercial interest representative for its board.

As with the percentage calculation of non-member representatives on SRO governing boards, any contract market governing board composition scheme in which the percentage of commercial interest representatives must be rounded-up to reach ten percent of the board would be inconsistent with § 1.64(b)(2).

In complying with § 1.64, the Commission wishes to clarify that SROs may use a single person to help meet more than one of the governing board composition requirements. For instance, a board member representing a commercial concern who is also a non-SRO member, may count towards both the ten percent commercial interest and twenty percent non-member representation requirements.

5. Major Disciplinary Committee Definition

a. *Proposed regulation.* In its proposed rulemaking, the Commission proposed § 1.64(b)(4) through (6) which would establish compositional requirements for SRO major disciplinary committees consistent with the statutory directives of section 206 of the 1992 Act. Under proposed § 1.64(a)(2), a "major disciplinary committee" was defined as a panel of persons who, as a group, were "empowered by [an SRO] to bring disciplinary charges, to conduct disciplinary hearings, to settle disciplinary charges, to impose sanctions or to hear appeals thereof."

The Commission proposed to define major disciplinary committees in terms of panels which operate as a group in conducting disciplinary matters because it believed that any disciplinary matter which was significant enough to warrant an adjudicatory panel, should require the protections of § 1.64(b)(4) through (6).

The Commission also stated its belief that the ability "to bring disciplinary charges, to conduct disciplinary hearings, to settle disciplinary charges, to impose sanctions [and] to hear appeals" are each disciplinary powers which could have a detrimental effect if they were not applied fairly and impartially. Accordingly, the Commission's proposed definition of a major disciplinary committee would have covered any SRO panel which had any one of these powers.

b. *Comments received.* The commenters contended that the definition of major disciplinary committee should be narrowed. The CBT commented that the definition should not include panels which issue charges but do not hold adjudicative hearings. CBT argued that the benefits of the major disciplinary committee composition requirements would still be fully obtained by limiting the definition to hearing and appellate committees.

The NYCE recommended that the definition be clarified to cover panels which impose disciplinary sanctions, rather than any type of sanction, since delivery committees, which impose penalties for delivery disputes, otherwise could be considered major disciplinary committees.

The CME and CSC each urged that major disciplinary committees be defined in terms of the type of rule violation involved. The CME contended that any committee considering a disciplinary matter involving a "disciplinary offense," as that term is defined in Commission § 1.63,[16] should be a major disciplinary committee for purposes of § 1.64.

c. *Regulation 1.64(a)(2).* Based upon the CBT's and NYCE's comments the Commission has revised the definition of major disciplinary committee to include "a committee of persons who are authorized by [an SRO] to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof" for certain types of enumerated cases.[17] While the Commission has adopted the CBT's recommendation to delete charging committees from this definition, it has decided to retain committees which settle disciplinary charges and impose disciplinary sanctions. Section 206 prescribes composition requirements for major disciplinary committees in order to "ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties." The Commission believes that the settlement of disciplinary charges and the imposition of disciplinary sanctions both constitute the assessment of penalties and that panels which exercise such powers should be subject to § 1.64's composition requirements.

The Commission also has decided to follow CME's suggestions and, thus, has defined major disciplinary committees as disciplinary committees which are concerned with cases involving SRO rule violations which qualify as § 1.63 disciplinary offenses.[18] Under this approach, the Commission is assured that major disciplinary committees will be concerned with serious SRO rule violations. Additionally, because of their compliance with current § 1.63, the SROs should already have established their respective sets of "disciplinary offenses."[19] This should facilitate each SRO's ability to distinguish major and non-major disciplinary committees when implementing the composition requirements of § 1.64(c) (1) through (4).

The Commission believes that § 1.64(a)(2)'s definition of major disciplinary committee should ensure

[15] Proposed § 1.64(b)(3) has been renumbered as § 1.64(b)(2).

[16] Commission § 1.63, which is being amended as part of this same rulemaking, See section II.C., below, disqualifies persons who have committed disciplinary offenses from serving on various SRO bodies. The disqualifying disciplinary offenses include, among other things, various types of SRO rule violations.

[17] The Commission understands that at most SROs, governing boards hear appeals of disciplinary matters and, thus, qualify as major disciplinary committees under § 1.64(a)(2). In such a case, the Commission will only require that a governing board conform with § 1.64(b)'s board composition requirements, including when the governing board is considering a disciplinary case.

[18] Section 1.64(a)(2) defines an SRO major disciplinary committee as any committee which has disciplinary jurisdiction over cases involving:

* * * any violation of the rules of the [SRO] except those which:

(i) Are related to:

(A) Decorum or attire,

(B) Financial requirements, or

(C) Reporting or recordkeeping; and,

(ii) Do not involve fraud, deceit or conversion.

The types of rule violations listed in § 1.64(a)(2) do not duplicate the SRO rule violations which constitute a § 1.63 disciplinary offense as § 1.63 also defines disciplinary offenses to include reporting or recordkeeping violations which result in an aggregate of more than $5,000 in fines in one calendar year. This aspect of the definition was not incorporated in § 1.64(a)(2), which defines major disciplinary committees exclusively in terms of the type rule violations over which such committees have jurisdiction and not the size of any possible sanctions.

For the purposes of § 1.64(a)(2)(i)(A), SRO violations related to decorum include trading decorum violations for which SROs summarily impose minor penalties such as bidding through offers.

[19] See section II.C.3., below, for a discussion of the list of § 1.63 disciplinary offenses each SRO is expected to maintain and publicize.

that persons who are involved in serious disciplinary matters will receive the protections offered by § 1.64(c)'s composition requirements for major disciplinary committees, while also ensuring that SRO disciplinary committees and personnel who deal with minor SRO disciplinary violations will be able to dispose of such matters in an efficient and expeditious manner.[20]

6. Major Disciplinary Committee Diversity Standards

a. *Proposed regulation.* Section 206 of the 1992 Act amended sections 5a(15)(A) and 17(b)(12)(A) of the Act to require that the major disciplinary committees of contract markets and registered futures associations, respectively, have a diversity of membership sufficient to ensure fair proceedings. In order to implement these provisions, the Commission proposed § 1.64(b)(4) which would require that each SRO maintain rules specifying diversity standards for its major disciplinary committees. As part of this proposal, the Commission stated that responsive SRO rules should establish some form of categorical representation on major disciplinary committees in order to ensure that the persons discharging disciplinary responsibilities would treat accused parties fairly and impartially.

b. *Comments received.* The CME submitted the only comment with respect to § 1.64's diversity standards for major disciplinary committees. The CME stated that it was not necessary to impose a system of fixed categorical representation on major disciplinary committees. The CME contended that the Commission could inspect the minutes of disciplinary hearings during rule enforcement reviews and verify that each SRO was complying with the diversity standards set forth in section 206 of the 1992 Act.

c. *Regulation 1.64(c)(4).*[21] As with § 1.64(b)(1)'s standard for diversity on SRO governing boards, § 1.64(c)(4) has been modified to provide discretion to SROs in ensuring that a diversity of membership interests are represented on their major disciplinary committees. The Commission will not require that each SRO establish a quota system regarding participation in any particular type of major disciplinary committee proceeding. The Commission, however, will require that each SRO have some established methodology for the selection of major disciplinary committee members which will prevent discriminatory treatment for the subjects of disciplinary matters.

The composition requirements of § 1.64(c)(4), as well as those of the other provisions of § 1.64(c), apply independently to each major disciplinary committee and to any hearing panel thereof. Accordingly, under § 1.64(c)(4), a hearing panel of a major disciplinary committee would itself have to include a diversity of membership interests, even if the hearing panel was a subcommittee of a larger major disciplinary committee which properly included a diversity of membership interests.

7. Major Disciplinary Committee Non-Member Representatives

a. *Proposed regulation.* The Commission's proposed rulemaking also included a § 1.64(b)(5) which would have required that each SRO specify by rule that each of its major disciplinary committees have at least one member who is not a member of the SRO. This requirement would have applied to all SRO major disciplinary committees proceedings, regardless of the person or rule violation involved in the proceeding.

b. *Comments received.* Some of the commenters criticized proposed § 1.64(b)(5) for requiring that major disciplinary committees include a non-member at all of their proceedings. The CBT indicated that this approach would be burdensome, would undercut SRO self-policing and could be costly if SROs had to pay non-members. The CME, CSC and NFA all urged the Commission to limit the scope of major disciplinary committee hearings for which a non-member must participate. CSC and NFA pointed out that section 206 of the 1992 Act only requires non-member participation in cases where the subject of the proceeding is a member of the governing board or of a major disciplinary committee, where there is a charge of manipulation and where appropriate to carry out the purposes of the 1992 Act. They both urged that the Commission modify the scope of proposed § 1.64(b)(5) accordingly.

The CME believed that it was not necessary to include non-members on major disciplinary committees unless they were hearing cases which involved § 1.63 "disciplinary offenses."

c. *Section 1.64(c)(1).*[22] The Commission has revised § 1.64(c)(1) by limiting the type of cases for which an SRO major disciplinary committee must include a person who is a non-member of that SRO. Consistent with the minimum conditions set by Section 206 of the Act, § 1.64(c)(1)(i) requires that SRO major disciplinary committees include a non-SRO member whenever the subject of the proceeding is a member of the SRO's governing board or major disciplinary committee or whenever any of the rule violations involved pertain to manipulation or attempted manipulation of the price of a commodity, a futures contract or an option on a futures contract.

Final § 1.64(c)(1)(ii) also requires that contract market major disciplinary committees include a non-member whenever the rule violation they are considering involves conduct by a member which "directly results in financial harm" to a non-member of the contract market.[23] The Commission believes that this approach isolates the types of cases for which an outside presence or witness is most essential—cases involving alleged violative behavior by a contract market member that cause specific injury to a non-member of the contract market.

Section 206(c)(3) of the 1992 Act specifies that "at a minimum," the Commission's implementing regulations require that SRO major disciplinary committees include non-SRO member representatives when considering cases involving manipulation or members of SRO governing boards or major disciplinary committees. In addition, section 206(a) states that the Commission may require a non-member presence on major disciplinary committees "where appropriate to carry out the purposes" of the Act. Consistent with section 206's directive, the Commission believes that in contract market major disciplinary committee proceedings which involve the treatment of non-members by members, fairness requires that the accused contract market member not be judged exclusively by persons who might have close, daily contact with the accused member.

Based upon the NFA's comments, the Commission has determined to not require registered futures association major disciplinary committees to have a

[20] As part of this rulemaking, the Commission also has amended Commission § 1.63(a)(2)'s definition of "disciplinary committee" under final § 1.64(a)(2). Accordingly, a § 1.63(a)(2) "disciplinary committee" would include any person or panel authorized by an SRO to "conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions and to hear appeals thereof."

[21] Proposed § 1.64(b)(4) has been renumbered as § 1.64(c)(4).

[22] Proposed § 1.64(b)(5) has been renumbered as § 1.64(c)(1).

[23] By referring to conduct which "directly results in financial harm" to a non-member, § 1.64(c)(1)(ii) includes particularized behavior which results in financial harm to specific non-members and excludes acts which might have had a general effect on the market as a whole.

non-member representative when considering cases involving either manipulation or financial harm to non-members of the association. In the first instance, manipulation cases would be outside the disciplinary jurisdiction of registered future associations. Such associations, however, do consider disciplinary cases involving members causing financial harm to non-members. Nonetheless, for a number of reasons, the Commission does not believe it necessary to have a non-member presence on major disciplinary committees hearing such cases. First, NFA, the only current registered futures association, has a widespread membership across the country. Accordingly, it likely will be the case that NFA members serving on major disciplinary committees will not have had close, daily contact with an NFA member who is the subject of a disciplinary hearing. By comparison, contract market members customarily have closer professional relationships with one another.

Second, virtually every NFA disciplinary matter involves financial harm to non-members. The Commission believes that requiring NFA to have a non-member on its major disciplinary committees nearly every time that they convene would be extremely burdensome to the NFA. By comparison, contract market major disciplinary committees generally hear a wider variety of cases including many which pertain to member conduct not involving financial harm to a non-member. Accordingly, the Commission has decided to limit the non-member representative requirement for registered futures association major disciplinary committees to those disciplinary cases where the accused is either a member of the association's governing board or major disciplinary committee.

The Commission also seeks to clarify two points with respect to final § 1.64(c)(1). First, the non-member requirement applies whenever a major disciplinary committee convenes for any of the enumerated types of cases.

Second, NYMEX has indicated to the Commission that there are circumstances in which major disciplinary committees have to act in an expedited fashion because time is of the essence. For instance, some contract markets, such as NYMEX, have major disciplinary committees which respond to serious infractions by imposing sanctions at the same time or on the same day as the infractions. In these circumstances, it may be difficult for an SRO to secure a qualified non-member representative to participate on its major disciplinary committee. In such instances, the Commission will allow SRO major disciplinary committees to proceed without a non-member representative.

If an SRO major disciplinary committee so convenes without a required non-member representative, the SRO must document its efforts to include a non-member and its reasons for proceeding without one. The Commission stresses that this exception is limited to instances where SRO major disciplinary committees must immediately address violative behavior due to possible market ramifications, and not simply because it is an SRO's practice. The Commission will carefully monitor the SROs to ensure that this exception is not used to circumvent the purpose of § 1.64(c)(1). This exception only applies to § 1.64(c)(1)'s non-member representative requirement for SRO major disciplinary committees and not to the diversity or differing membership interest requirements applicable to such committees under § 1.64(c) (2) through (4). The Commission believes that those other requirements can be met with SRO members, who should be more accessible on short notice than non-SRO members.

8. Major Disciplinary Committee Representatives of Differing Membership Interests

a. *Proposed regulation.* In response to section 5a(15)(B), as it was amended by section 206 of the 1992 Act, the Commission proposed a § 1.64(b)(6) mandating that each SRO establish rules requiring that more than fifty percent of each major disciplinary committee be made up of persons representing a membership interest other than that of the person who was the subject of the disciplinary proceeding.

The premise of proposed Commission § 1.64(b)(6) was that persons who work in close proximity to one another may not be, or may not appear to be, objective in adjudicating disciplinary proceedings involving their colleagues. By requiring that half of each major disciplinary committee consist of persons who have a different membership interest than the accused, proposed § 1.64(b)(6) was intended to prevent the possibility of preferential treatment in disciplinary proceedings.

b. *Comments received.* NFA made two comments pertinent to proposed § 1.64(b)(6). First, NFA pointed out that section 206 requires only that NFA disciplinary panels include "qualified persons representing segments of the association membership other than that of the subject of the proceeding" without any fifty percent criteria. Second, NFA urged that APs not be considered an individual membership interest category. NFA indicated that because nearly all of their business conduct committee ("BCC") members are APs, it would be difficult to secure non-APs to hear BCC cases involving APs. NFA suggested that for the purposes of defining NFA's different membership interests, APs be classified according to the membership interest of their sponsoring member.

In addition, the CME and CSC both requested that the Commission clarify various aspects of the membership interest definition related to proposed § 1.64(b)(6).

c. *Section 1.64(c) (2) and (3).* The Commission has revised proposed Regulation 1.64(b)(6) and divided it into two final regulations—§ 1.64(c)(2) addressing contract markets and § 1.64(c)(3) addressing registered futures associations.

Under § 1.64(c)(2), more than half of the members of each contract market major disciplinary committee must be drawn from membership interest groups other than the membership interest of the subject of the proceeding. Based upon § 1.64(a)(4)'s definition of membership interest, if the subject of a proceeding is a floor broker, fifty percent of the major disciplinary committee members considering the case must consist of persons who are not floor brokers.

For the purposes of § 1.64(c)(2), a contract market may alternatively choose to define membership interests according to the different pits or commodities traded at the SRO. So, for example, a contract market with five trading pits could decide to group its members according to the trading pit that each member primarily trades in. In such a case, if a major disciplinary committee at the SRO heard an appropriate case involving a member who primarily traded in pit one, under § 1.64(c)(2), at least fifty percent of the committee would have to consist of persons who were not members who primarily traded in pit one. With respect to the formulation of such alternative definitions of membership interests, the Commission reminds each contract market to adhere to the basic premises of § 1.64(c)(2) that at least fifty percent of each major disciplinary committee consist of persons who do not have relations with the accused member which might affect their objectivity.

In accordance with NFA's suggestions, § 1.64(c)(3) has been revised to require that each registered futures association major disciplinary committee include some persons

representing membership interest groups other than that of the proceeding's subject. For these purposes, NFA's membership interest groups are FCMs, IBs, CPOs and CTAs, with APs being deemed to belong to the membership interest group of its sponsoring member. The Commission believes that this approach is reasonable in that it is customary to expect that an AP's self-interests will be more closely aligned with those of its type of NFA member sponsor than with those of the general class of APs.

Accordingly, final Commission § 1.64(c) conforms to Section 206's intent that each major SRO disciplinary committee include persons with different self-interests than the accused in order to encourage objectivity and discourage preferential treatment in disciplinary proceedings.

9. Governing Board Composition Reporting Requirement

a. *Section 1.64(d).* The Commission did not propose any reporting requirement with respect to the composition of SRO governing boards in its proposed Commission § 1.64. The Commission has determined, however, that such a requirement will facilitate the Commission's ability to oversee and enforce each SRO's compliance with § 1.64(b)'s governing board composition requirements. Accordingly, final § 1.64(d) requires that each SRO submit to the Commission, within thirty days after each governing board election, a list of the board's members, the membership interests they represent and a demonstration of how the board's composition is consistent with § 1.64(b) and the SRO's own implementing standards and procedures. Each SRO's submission should particularly describe the qualifications of each non-member representative to its governing board.[24]

In addition to the reporting requirement, the Commission reminds each SRO that it has a continuing obligation under section 5a(8) of the Act and Commission § 1.51, or section 17(q) of the Act in the case of NFA, to take whatever steps may be necessary to ensure that its governing board is in compliance with § 1.64(b) and any SRO standards and procedures which implement § 1.64(b).

[24] Contract markets have been providing similar governing board information to the Division of Trading and Markets ("Division") since 1991 pursuant to an informal agreement between the Division and the members of the Joint Compliance Committee.

B. Customer Notification of Disciplinary Actions

1. *Proposed regulation.* In its rulemaking, the Commission proposed a § 1.64(c) which required that whenever a contract market took final disciplinary action against a member for trading violations resulting in financial harm to a customer, the contract market must provide written notice of the action to the FCM that cleared the transaction.[25] In addition, § 1.64(c) proposed to require that a clearing FCM provide the same written notice to the customer involved, or, in a case where two or more FCMs have cleared and carried the transaction, each FCM involved provide written notice to the FCM with which it dealt until notice was provided to the ultimate customer. The written notice describing the disciplinary action was to include the principal facts of the case along with the same type of information required in Regulation 9.11 notices.

2. *Comments received.* The commenters suggested that certain substantive refinements be made to the proposed customer notification provision. The CBT and COMEX commented that the requirement of section 206 of the 1992 Act and proposed § 1.65 that a customer notice include "the principal facts of the case involved" conflicted with section 8c(1)(B) of the Act; which prohibits contract markets from disclosing disciplinary matters to third parties. Accordingly, they suggested that the provision should only require the same information which would be provided in a § 9.11 notice.

The CSC commented that it would be unfair and prejudicial to notify a member's customer of a disciplinary action involving that member while appeal proceedings were still pending before either the contract market or the Commission. Finally, NYMEX suggested that the provision be amended to provide that any action based upon a settlement agreement without an adjudication of the truth of the allegations should not require customer notice.

3. *Section 1.67.*[26] Final § 1.67 continues to require that upon any disciplinary action involving a member causing financial harm to a non-member, the contract market must provide notice thereof to the clearing FCM involved and each FCM in the clearing and carrying chain must continue to pass on such notice until it reaches the ultimate customer. For purposes of this provision, the ultimate customer can be either an ordinary individual customer or a CPO or foreign broker who maintains an account at the FCM. Although entities such as CPOs and foreign brokers will not be required by § 1.67 to provide notice to their customers, they may have an independent obligation to provide such notice.

The notice required by § 1.67 must include the principal facts of the case as well as an indication that the contract market found that the violative behavior caused financial harm to the customer. The Commission has determined that the contents of a proper § 9.11 notice should be sufficiently informative to ensure that a public customer who receives such a notice will be able to exercise effectively their rights with respect to the treatment of their orders by contract market members.[27]

The Commission also has revised § 1.67's definition of "final disciplinary action" so that contract markets will not be required to issue a notice of customer financial harm until the member involved has exhausted his or her appeal rights at the contract market. With this approach, members will be able to fully defend their cases before the contract market, while still assuring prompt notice to injured customers.[28]

[25] For these purposes, proposed § 1.64(a)(5) defined "final disciplinary action" to mean any contract market final decision as that term is defined by contract market rules implementing the requirements of Commission § 8.20 and 8.28. Accordingly, a "final disciplinary action" under proposed Commission § 1.64 included all disciplinary committee decisions, regardless of whether such a decision was on appeal at the contract market, and all settlement agreements.

[26] Based upon an organizational recommendation from the CSC, the Commission has determined that it is more appropriate for the customer notification requirement to be contained in its own § 1.67, separate from the composition requirements of § 1.64. While the composition and customer notification requirements are both derived from section 206 of the 1992 Act, the Commission believes that addressing both subject matters in a single regulation could be confusing to regulatees and the public.

[27] Commission § 9.11(b) requires that notices of exchange disciplinary actions include:

(1) The name of the person against whom the disciplinary action or access denial action was taken;

(2) A statement of the reasons for the disciplinary action or access denial action together with a listing of any rules which the person who was the subject of the disciplinary action or access denial action was charged with having violated or which otherwise serve as the basis of the exchange action;

(3) A statement of the conclusions and findings made by the exchange with regard to each rule violation charged or, in the event of settlement, a statement specifying those rule violations which the exchange has reason to believe were committed;

(4) The terms of the disciplinary action or access denial action; [and,]

(5) The date on which the action was taken and the date the exchange intends to make the disciplinary or access denial action effective . . .

[28] Section 1.67's definition of final disciplinary action is substantially identical to the definition for

Continued

With respect to NYMEX's suggestion regarding notice upon settlement agreements, the Commission points out that section 206 of the 1992 Act requires a contract market to issue a notice whenever the "contract market takes final disciplinary action against a member" for violative behavior which causes financial harm to a customer. The provision does not create any exception for settlement agreements or for any particular type of settlement agreement (*i.e.*, ones that do or do not adjudicate the truth of the allegations involved.) Accordingly, Regulation 1.67's notice requirement is triggered by each of these types of SRO actions.[29]

A customer who is notified of an abuse of his order by a contract market member, of which he might otherwise have been ignorant, will be better able to evaluate his business relationship with the member or to initiate legal action. Additionally, Regulation 1.67's notice requirement should generate closer scrutiny of exchange activities by market users.

C. Prohibition of Oversight Panel Service

1. *Proposed regulation amendments.* In compliance with section 206 of the 1992 Act, the Commission proposed amendments to existing § 1.63 which would disqualify persons with certain disciplinary histories from serving on any SRO oversight panel and which would require each SRO to implement rules in this regard.[30] Under the proposed amendments, a person who was found to have committed a disciplinary offense, would be barred from oversight panel service for a period of three years from the date of such finding or for the length of any criminal sentence, SRO expulsion or suspension, Commission registration suspension, or failure to pay a disciplinary fine, resulting from the finding, whichever was longer.[31]

The proposed amendments to § 1.63(a) would define an SRO oversight panel to mean any body of persons having the authority to "review, recommend or establish policies or procedures with respect to the self-regulatory duties of the [SRO], including, but not limited to, compliance activities and disciplinary policies."

As directed by section 206 of the 1992 Act, the Commission also proposed to amend § 1.63(d) to require that each SRO establish, maintain and make available to the general public a notice of all those rules of the SRO which if violated would constitute a "disciplinary offense" under § 1.63. The requirement was intended to enable any person who had been found to have committed a rule violation by an SRO to determine whether that violation was in fact a "disciplinary offense" for the purposes of § 1.63 and whether he or she would be disqualified from SRO committee service for a prescribed period.

2. *Comments received.* Several commenters criticized the proposed definition of oversight panel as being too broad. CME, CSC, NYCE and NYMEX each suggested alternative definitions which generally focused on bodies which oversee an SRO's surveillance, compliance, rule enforcement and disciplinary procedures.

3. *Amended regulation 1.63.* In accordance with the commenters' suggestions, the Commission has amended § 1.63(a)(4) to define "oversight panels" as panels which oversee an SRO's policies or procedures with respect to its surveillance, compliance, rule enforcement or disciplinary responsibilities.[32] Section 1.63's service prohibition applies to each committee which exercises any of the enumerated oversight duties, even if such duties are only part of the committee's responsibilities. Accordingly, SRO committees, such as executive committees which have a wide range of duties in addition to oversight duties, will still be considered an "oversight panel" for purposes of Commission § 1.63.

The Commission also is revising § 1.63(d) to require that each SRO submit its listing of disciplinary offenses to the Commission at the beginning of each calendar year to the extent necessary to reflect any revisions to the list over the previous year. This requirement would assist the Commission in monitoring each SRO's compliance with § 1.63.[33]

D. Submission of Rules Complying With Regulations 1.63 and 1.64

1. *Amended § 1.41(d).* The Commission has amended its § 1.41(d) to make clear that contract market rules which address § 1.63 and 1.64's requirements for SRO boards and committees are not exempt from the filing requirement of section 5a(a)(12)(A) of the Act and Commission § 1.41. Previously, 1.41(d) may have created a conflict with § 1.63 and 1.64 as § 1.41(d) exempted rules addressing the "organization and administrative procedures of a contract market's governing bodies" from the Commission's rule-filing requirements.

E. Additional Requirements of Section 206 of the 1992 Act

The Commission notes that various other requirements of section 206 of the 1992 Act are satisfied by Commission § 1.63, thus eliminating the need to establish any new Commission regulations. For instance, section 206 of the 1992 Act requires that SROs prohibit disciplinary committee service by persons with certain disciplinary records. As indicated above, Commission § 1.63 already prohibits service on SRO disciplinary committees, as well as on governing boards and arbitration panels, by persons who have committed certain enumerated disciplinary offenses.

III. Conclusion

The final § 1.64 and 1.67 and final amendments to §§ 1.41 and 1.63 implement the statutory directives of sections 5a, 8c and 17 of the Act, as they were amended by section 206 of the 1992 Act, with respect to composition of SRO governing boards and major disciplinary committees, restrictions on SRO oversight panel service and disciplinary action notices for customers.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract

that term in Commission § 1.63. The term is used in § 1.63 to establish when a finding of a disciplinary offense will result in a bar to SRO committee service.

[29] It is unclear whether NYMEX believes that settlement agreements are not informative with respect to the behavior underlying the agreements. The Commission notes, however, that a contract market issuing a § 9.11(b) notice based upon a settlement agreement must include a statement as to the rule violations which the contract market has reason to believe were committed. Accordingly, this type of information should be of assistance to a customer who receives it pursuant to § 1.67's requirements.

[30] Commission § 1.63 already establishes disqualification standards for SRO disciplinary committees, arbitration panels and governing boards.

[31] Under Commission § 1.63, the disqualifying disciplinary offenses include, among other things, various SRO rule violations and any violation of the Act or the Commission's regulations.

[32] These responsibilities pertain to both the financial and trade practice requirements of an SRO.

[33] The CSC suggested in its comments that the Commission revise certain substantive provisions of current Commission Regulation 1.63. The Commission has determined to not revisit any other provisions of § 1.63 at this time.

markets are not "small entities" for purposes of the RFA, and that the Commission, therefore, need not consider the effect of proposed rules on contract markets. 47 FR 18618, 18619 (April 30, 1982).

Furthermore, the Chairman of the Commission previously has certified on behalf of the Commission that comparable rule proposals effecting registered futures associations, if adopted, would not have had a significant economic impact on a substantial number of small entities. 51 FR 44866, 44868 (December 12, 1986). Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget ("OMB"). The OMB approved the collection of information associated with this rule on June 14, 1993 and assigned OMB control number 3038–0022 to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average burden hours per response; 613.26
Number of respondents; 4,295
Frequency of response; on occasion

The burden associated with this specific final rule is as follows:

Average burden hours per response; 1.25
Number of respondents; 27
Frequency of response; annually

Copies of the OMB-approved information collection package associated with this rulemaking may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Clearing organizations, Registered futures associations, Members of contract market.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b) the Commission hereby amends title 17, chapter I, part 1 of the Code of Federal Regulations by amending existing §§ 1.41 and 1.63 and by adopting new §§ 1.64 and 1.67 as follows:

PART 1— GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 USC 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.41 is amended by revising paragraph (d) heading and (d)(1) introductory text to read as follows:

§ 1.41 Contract market rules; submission of rules to the commission; exemption of certain rules.

* * * * *

(d) *Rules that are exempt from the requirements of section 5a(a)(12)(A) of the Act.* (1) Except as otherwise provided by §§ 1.63 and 1.64, contract market rules that do not relate to terms and conditions are exempt from the requirements of section 5a(a)(12)(A) of the Act and this section where such rules address:

* * * * *

3. Section 1.63 is amended by redesignating paragraph (a)(6) as (a)(7); by redesignating paragraph (a)(4) as (a)(6); by adding a new paragraph (a)(4); and by revising paragraphs (a)(2), (a)(5), newly redesignated paragraph (a)(6), (b) introductory text, and (c) through (f) to read as follows:

§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.

(a) * * *

(2) *Disciplinary committee* means any person or panel authorized by a self-regulatory organization to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof.

* * * * *

(4) *Oversight panel* means any panel authorized by a self-regulatory organization to review, recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance, compliance, rule enforcement or disciplinary responsibilities.

(5) *Final decision* means:

(i) a decision of a self-regulatory organization which cannot be further appealed within the self-regulatory organization, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or,

(ii) any decision by an administrative law judge, a court of competent jurisdiction or the Commission which has not been stayed or reversed.

(6) *Disciplinary offense* means:

(i) any violation of the rules of a self-regulatory organization except those rules related to

(A) decorum or attire,

(B) financial requirements, or

(C) reporting or recordkeeping unless resulting in fines aggregating more than $5,000 within any calendar year;

(ii) any rule violation described in subparagraphs (a)(6)(i) (A) through (C) of this regulation which involves fraud, deceit or conversion or results in a suspension or expulsion;

(iii) any violation of the Act or the regulations promulgated thereunder; or,

(iv) any failure to exercise supervisory responsibility with respect to acts described in paragraphs (a)(6) (i) through (iii) of this section when such failure is itself a violation of either the rules of a self-regulatory organization, the Act or the regulations promulgated thereunder.

(v) A disciplinary offense must arise out of a proceeding or action which is brought by a self-regulatory organization, the Commission, any federal or state agency, or other governmental body.

(7) *Settlement agreement* means any agreement consenting to the imposition of sanctions by a self-regulatory organization, a court of competent jurisdiction or the Commission.

(b) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and § 1.41 or, in the case of a registered futures association, pursuant to section 17(j) of the Act, that render a person ineligible to serve on its disciplinary committees, arbitration panels, oversight panels or governing board who:

* * * * *

(c) No person may serve on a disciplinary committee, arbitration panel, oversight panel or governing board of a self-regulatory organization if such person is subject to any of the conditions listed in paragraphs (b) (1) through (6) of this section.

(d) Each self-regulatory organization shall submit to the Commission a

schedule listing all those rule violations which constitute disciplinary offenses as defined in paragraph (a)(6) (i) of this section and to the extent necessary to reflect revisions shall submit an amended schedule within thirty days of the end of each calendar year. Each self-regulatory organization must maintain and keep current the schedule required by this section, post the schedule in a public place designed to provide notice to members and otherwise ensure its availability to the general public.

(e) Each self-regulatory organization shall submit to the Commission within thirty days of the end of each calendar year a certified list of any persons who have been removed from its disciplinary committees, arbitration panels, oversight panels or governing board pursuant to the requirements of this regulation during the prior year.

(f) Whenever a self-regulatory organization finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on that self-regulatory organization's disciplinary committees, arbitration panels, oversight panels or governing board, the self-regulatory organization shall inform the Commission of that finding and the length of the ineligibility in any notice it is required to provide to the Commission pursuant to either Section 17(h)(1) of the Act or Commission regulation 9.11.

4. Section 1.64 is added to read as follows:

§ 1.64 Composition of various self-regulatory organization governing boards and major disciplinary committees

(a) *Definitions.* For purposes of this section:

(1) *Self-regulatory organization* means "self-regulatory organization" as defined in § 1.3(ee), not including a "clearing organization" as defined in § 1.3(d).

(2) *Major disciplinary committee* means a committee of persons who are authorized by a self-regulatory organization to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof in cases involving any violation of the rules of the self-regulatory organization except those which:

(i) are related to:

(A) decorum or attire,

(B) financial requirements, or

(C) reporting or recordkeeping; and,

(ii) do not involve fraud, deceit or conversion.

(3) *Regular voting member of a governing board* means any person who is eligible to vote routinely on matters being considered by the board and excludes those members who are only eligible to vote in the case of a tie vote by the board.

(4) *Membership interest* (i) In the case of a contract market, each of the following will be considered a different membership interest:

(A) Floor brokers,

(B) Floor traders,

(C) Futures commission merchants,

(D) Producers, consumers, processors, distributors, and merchandisers of commodities traded on the particular contract market,

(E) Participants in a variety of pits or principal groups of commodities traded on the particular contract market; and,

(F) Other market users or participants; except that with respect to paragraph (c)(2) of this section, a contract market may define membership interests according to the different pits or principal groups of commodities traded on the contract market.

(ii) In the case of a registered futures association, each of the following will be considered a different membership interest:

(A) Futures commission merchants,

(B) Introducing brokers,

(C) Commodity pool operators,

(D) Commodity trading advisors; and,

(E) Associated persons, except that under paragraph (c)(3) of this section an associated person will be deemed to represent the same membership interest as its sponsor.

(b) Each self-regulatory organization must maintain in effect standards and procedures with respect to its governing board which have been submitted to the Commission pursuant to section 5(a)(12)(A) of the Act and § 1.41 or, when applicable to a registered futures association, pursuant to section 17(j) of the Act, that ensure:

(1) That twenty percent or more of the regular voting members of the board are persons who:

(i) Are knowledgeable of futures trading or financial regulation or are otherwise capable of contributing to governing board deliberations; and,

(ii) (A) Are not members of the self-regulatory organization,

(B) Are not currently salaried employees of the self-regulatory organization,

(C) Are not primarily performing services for the self-regulatory organization in a capacity other than as a member of the self-regulatory organization's governing board, or

(D) Are not officers, principals or employees of a firm which holds a membership at the self-regulatory organization either in its own name or through an employee on behalf of the firm;

(2) In the case of a contract market, that ten percent or more of the regular voting members of the governing board be comprised where applicable of persons representing farmers, producers, merchants or exporters of principal commodities underlying a commodity futures or commodity option traded on the contract market; and

(3) That the board's membership includes a diversity of membership interests. The self-regulatory organization must be able to demonstrate that the board membership fairly represents the diversity of interests at such self-regulatory organization and is otherwise consistent with this regulation's composition requirements;

(c) Each self-regulatory organization must maintain in effect rules with respect to its major disciplinary committees which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and § 1.41 or, when applicable to a registered futures association, pursuant to section 17(j) of the Act, that ensure:

(1) That at least one member of each major disciplinary committee or hearing panel thereof be a person who is not a member of the self-regulatory organization whenever such committee or panel is acting with respect to a disciplinary action in which:

(i) The subject of the action is a member of the self-regulatory organization's:

(A) Governing board, or

(B) Major disciplinary committee; or,

(ii) Any of the charged, alleged or adjudicated contract market rule violations involve:

(A) Manipulation or attempted manipulation of the price of a commodity, a futures contract or an option on a futures contract, or

(B) Conduct which directly results in financial harm to a non-member of the contract market;

(2) In the case of a contract market, that more than fifty percent of each major disciplinary committee or hearing panel thereof include persons representing membership interests other than that of the subject of the disciplinary proceeding being considered;

(3) In the case of a registered futures association, that each major disciplinary committee or hearing panel thereof include persons representing membership interests other than that of the subject of the disciplinary proceeding being considered; and,

(4) That each major disciplinary committee or hearing panel thereof include sufficient different membership

interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of a committee's or the panel's responsibilities.

(d) Each self-regulatory organization must submit to the Commission within thirty days after each governing board election a list of the governing board's members, the membership interests they represent and how the composition of the governing board otherwise meets the requirements of § 1.64(b) and the self-regulatory organization's implementing standards and procedures.

5. Section 1.67 is added to read as follows:

§ 1.67 Notification of final disciplinary action involving financial harm to a customer.

(a) *Definitions.* For purposes of this section:

(1) *Final disciplinary action* means any decision by or settlement with a contract market in a disciplinary matter which cannot be further appealed at the contract market, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction.

(b) Upon any final disciplinary action in which a contract market finds that a member has committed a rule violation that involved a transaction for a customer, whether executed or not, and that resulted in financial harm to the customer:

(1)(i) the contract market shall promptly provide written notice of the disciplinary action to the futures commission merchant that cleared the transaction; and,

(ii) a futures commission merchant that receives a notice, under paragraph (b)(1)(i) of this section shall promptly provide written notice of the disciplinary action to the customer as disclosed on its books and records. If the customer is another futures commission merchant, such futures commission merchant shall promptly provide the notice to the customer.

(2) A written notice required by paragraph (b)(1) of this section must include the principal facts of the disciplinary action and a statement that the contract market has found that the member has committed a rule violation that involved a transaction for the customer, whether executed or not, and that resulted in financial harm to the customer. For the purposes of this paragraph, a notice which includes the information listed in § 9.11(b) shall be deemed to include the principal facts of the disciplinary action thereof.

Issued in Washington, DC on June 29, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-16525 Filed 7-12-93; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-32586; File No. S7-34-92]

RIN 3235-AF67

Early Warning Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendments.

SUMMARY: The Securities and Exchange Commission (the "Commission") is amending Rule 17a-11 under the Securities Exchange Act of 1934 (the "Exchange Act"). The amendments are designed to reduce certain reporting burdens on brokers and dealers by eliminating, among other things, the current requirement that a broker or dealer submit supplemental reports to the Commission and other regulatory bodies when its net capital declines below certain specified levels, or in other instances that indicate the existence of financial or operational difficulties.

EFFECTIVE DATE: The amendments shall become effective on August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Roger G. Coffin, (202) 272-7375, or Elizabeth K. King, (202) 272-3738, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Section 17(a) of the Exchange Act provides the Commission with the authority to promulgate rules requiring registered broker-dealers to make and transmit reports that the Commission deems necessary in the public interest or for the protection of investors. Pursuant to this authority, the Commission adopted Rule 17a-11 (the "Rule") in 1971.[1] The Rule imposes a duty on broker-dealers to report net capital and other operational problems and to file reports regarding those problems within certain time periods. Although there have been minor revisions to the Rule since it was adopted, this is the first comprehensive examination of Rule 17a-11 in over 20 years. The Commission believes that the requirements to file FOCUS Reports may be eliminated without compromising the ability of the Commission or the Designated Examining Authorities ("DEAs") to monitor the condition of broker-dealers.

B. Proposal

On October 26, 1992, the Commission proposed for comment amendments to Rule 17a-11[2] that, in part, would relieve broker-dealers of the obligation to furnish the Commission with Part II or Part IIA of Form X-17A-5 ("FOCUS Report")[3] when their net capital declines below certain levels. During the public comment period, the Commission authorized the Division to issue a no-action letter permitting the DEAs to waive the requirement to file a FOCUS Report as currently required by paragraphs (a) and (b) of Rule 17a-11. In response to its proposal to amend Rule 17a-11, the Commission received two comment letters, one from the National Association of Securities Dealers, Inc. (the "NASD"), and one from the Chicago Mercantile Exchange (the "CME"), both of which supported the proposed amendments. The Commission is adopting the proposed amendments in substantially the form as proposed.

II. Rule Amendments

A. Paragraph (a)

Currently, paragraph (a) of Rule 17a-11 requires every broker-dealer whose net capital falls below its required minimum level, or whose total outstanding principal amounts of satisfactory subordination agreements exceed allowable levels for more than 90 days, to do two things. First, the broker-dealer must give notice of the event on that same day. Second, the broker-dealer must file a FOCUS Report within 24 hours of the notice.

The Commission is eliminating the requirement that broker-dealers file a FOCUS Report within 24 hours after notifying the Commission of a net capital deficiency. Broker-dealers will

[1] Securities Exchange Act Release No. 9268 (July 30, 1971), 36 FR 14725 (Aug. 11, 1971).

[2] Securities Exchange Act Release No. 31355 (Oct. 26, 1992), 57 FR 49156 (Oct. 30, 1992).

[3] FOCUS Reports contain schedules including the broker-dealer's: net capital; assets and liabilities; and income and expenses. Generally, Part IIA is filed by broker-dealers that do not clear or carry customer accounts, and those broker-dealers that are subject to the requirements of paragraphs (a)(2) and (a)(3) of Rule 15c3-1. Part II is filed by all other broker-dealers engaged in a general securities business and subject to paragraph (a)(1) of Rule 15c3-1.

remain obligated to transmit notice of a net capital deficiency on the same day of the occurrence. Unlike the previous rule, however, the amendments require the notice to specify the broker-dealer's net capital requirement and its current amount of net capital.[4] The amendments also require a broker-dealer who has been notified by the Commission or its DEA of a net capital deficiency to give notice of the deficiency, even if the broker-dealer disagrees with the Commission's or the DEA's determination. In such a case, the amendments permit the broker-dealer to specify the reasons for its disagreement in the notice.

The same-day notice requirement gives the Commission and the DEAs adequate early warning of financial or operational problems. After receiving notice of a capital deficiency, the Commission or a DEA will be able to increase its surveillance of a broker-dealer experiencing difficulty and to obtain any additional information necessary to assess the broker-dealer's financial condition.

The amendments also eliminate the notification requirement for broker-dealers whose total outstanding principal amounts of satisfactory subordination agreements exceed the maximum allowable for a period in excess of 90 days. A broker-dealer is currently required, pursuant to paragraph (c)(2) of Rule 15c3–1d, to give notice to its DEA if, after giving effect to all subordinated loans that are mature or which are scheduled to mature within six months, its net capital declines below the identical levels contained in paragraph (a) of Rule 17a–11. The Commission believes that the notice provided for in Rule 15c3–1d is sufficient to give regulators an early warning of problems involving a broker-dealer's subordinated loan agreements.

B. Paragraph (b)

Paragraph (b) of Rule 17a–11 currently requires every broker-dealer whose net capital does not equal or exceed a certain level to file a monthly FOCUS Report for at least three months. The capital level contained in paragraph (b) is higher than the minimum level referred to in paragraph (a), and is referred to as an "early warning level."[5] When a broker-dealer's net capital level is declining, it would first trigger the filing requirements set forth in paragraph (b) of the Rule. If the broker-dealer's net capital continues to drop, and it falls below the broker-dealer's base minimum capital requirement, the broker-dealer would be required to comply with the additional FOCUS Report filing and notice requirements of paragraph (a) of the Rule.

The amendments to paragraph (b) of the Rule eliminate the requirement that a broker-dealer file a FOCUS Report within 15 days after the end of each month for three successive months. In lieu of this requirement, the amendments require brokers-dealers to give notice promptly (but within 24 hours) after the event triggering the filing requirement. The Commission expects that this notice requirement will be sufficient to alert the Commission and the broker-dealer's DEA that a broker-dealer may be experiencing financial or operational difficulty. Thereafter, the Commission or the DEA may require any additional information that it deems necessary to monitor the condition of the broker-dealer.

In their comment letters, both the NASD and the CME supported the proposed elimination of the reporting requirements. The NASD and the CME agreed that prompt notice by a broker-dealer experiencing financial or operational difficulties will provide its DEA with sufficient early warning to monitor the broker-dealer's condition.

C. Paragraph (b)(4)

The Commission is amending certain other paragraphs of Rule 17a–11. For example, there are references in paragraph (b)(4) of Rule 17a–11 to three existing notice provisions set forth in the net capital rule requiring broker-dealers subject to those provisions to give notice in accordance thereto. However, paragraph (b)(4) of Rule 17a–11 does not reference all of the applicable net capital[6] or customer protection rule[7] notice provisions (such as the requirement to give notice of large withdrawals of capital under paragraph (e) of Rule 15c3–1), and the Commission believes it would be appropriate for the Rule to do so. Accordingly, the Commission is amending Rule 17a–11 to refer to five previously existing notice provisions contained in the net capital rule, the customer protection rule, and Rule 17a–5.

These amendments do not add any additional reporting burdens because they simply reference certain notice sections for clarification purposes and do not, by themselves, create an obligation to report. Additionally, the net capital rule, the customer protection rule and Rule 17a–5 will remain unchanged (with the exception of minor technical revisions to Rule 17a–5 and Rule 15c3–1d discussed below). Rather, the Rule will be clarified to contain a complete, rather than a partial, listing of the Commission's financial responsibility notice requirements.

D. Paragraph (c)

Under current paragraph (c) of Rule 17a–11, every broker-dealer is required to give notice immediately if it fails to make and keep current its required books and records. In order to clarify the time within which notice must be transmitted under paragraph (c) of the Rule, the amendments require notice to be provided the same day of the event.

E. Paragraph (f)

Paragraph (f) of the Rule (which will be redesignated as paragraph (g)) requires broker-dealers to give notice by telegraph and to transmit reports to the principal office of the Commission in Washington, DC, the regional office of the Commission for the region in which the broker-dealer has its principal place of business, and the broker-dealer's DEA. The amendments specify that notice required by the Rule may be given or transmitted by means of either a facsimile transmission or telegraph. The amendments also state that the report required by paragraph (c) or paragraph (d) of Rule 17a–11 may be transmitted by overnight delivery.

F. Other Amendments

The Commission is adopting amendments that reorganize the Rule 17a–11's structure and make certain technical revisions. For example, references in the current Rule to "his" will be changed to "its" in order to eliminate any gender-specific language.

In addition, because the amendments will redesignate the notice requirement currently contained in paragraph (f) of Rule 17a–11 to paragraph (g), certain sections of Rule 17a–5 that refer to paragraph (f) require technical modification. Accordingly, the Commission is adopting revisions to

[4] Many of the notices received by the Commission already contain this information. The Commission believes it would be appropriate, however, to specify the contents of the notice in the Rule to standardize the notices received.

[5] There are three early warning levels. First, a broker-dealer that has elected to compute its net capital under the basic method must give notice if its aggregate indebtedness, as defined in Rule 15c3–1, exceeds 1,200 percent of its net capital. Second, a broker-dealer that computes its net capital under the alternative standard is required to give notice if its net capital falls below 5 percent of its aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirement for Brokers and Dealers under Rule 15c3–3. Third, a broker-dealer that computes its net capital under either standard is required to give notice if its total net capital declines below 120 percent of its minimum requirement. If a broker-dealer falls out of net capital compliance, it must comply with both paragraphs (a) and (b) of Rule 17a–11.

[6] Rule 15c3–1 (17 CFR 240.15c3–1).

[7] 17 CFR 240.15c3–3.

certain sections of Rule 17a–5 that would change the references to paragraph (f) of Rule 17a–11 to paragraph (g).

Finally, paragraph (c)(5)(i) of Rule 15c3–1d permits a broker-dealer to obtain temporary subordinated loans in certain circumstances in order to participate in activities such as securities underwritings. Currently, Rule 15c3–1d prohibits a broker-dealer from entering into a temporary subordinated loan during any period in which the broker-dealer is subject to "any of the reporting provisions" of Rule 17a–11.[8] This provision was intended to cover the period in which a broker-dealer was required to file FOCUS reports under Rule 17a–11, which requirement is being eliminated by the Commission.

In order to retain the net capital rule's prohibition against a broker-dealer obtaining a temporary subordinated loan during a period of financial or operational difficulty, the Commission is making a technical amendment to paragraph (c)(5)(i) of Rule 15c3–1d. Based on a recommendation by the NASD, paragraph (c)(5)(i) is being amended to prohibit a broker-dealer from obtaining a temporary subordinated loan if it has given notice under Rule 17a–11 within the preceding thirty calendar days. This amendment will enable the DEAs to prevent a broker-dealer from obtaining temporary subordinated loans during periods in which the broker-dealer may be experiencing financial or operational difficulties.

III. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604 concerning the final rule amendments. The FRFA states that the Commission did not receive any comments concerning the Initial Regulatory Flexibility Analysis. A copy of the FRFA may be obtained by contacting Elizabeth K. King, Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549, (202) 272–3881.

IV. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly section 15 thereof, 15 U.S.C. 78o, the Commission is amending §§ 240.17a–11, 240.17a–5, and 15c3–1d of Title 17 of the Code of Federal Regulations in the manner set forth below.

[8] 17 CFR 240.15c3–1d(c)(5)(i).

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. § 240.15c3–1d is amended by revising the second sentence of the introductory text of paragraph (c)(5)(i) to read as follows:

§ 240.15c3–1d Satisfactory Subordination Agreements (Appendix D to 17 CFR 240.15c3–1).

* * * * *

(c) * * *

(5) * * *

(i) * * * This temporary relief shall not apply to a broker or dealer if, within the preceding thirty calendar days, it has given notice pursuant to § 240.17a–11, or if immediately prior to entering into such subordination agreement, either:

* * * * *

2. § 240.17a–5 is amended by revising paragraph (c)(2)(iii) and revising the first three sentences of paragraph (h)(2) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(c) * * *

(2) * * *

(iii) If in connection with the most recent annual audit report pursuant to § 240.17a–5, the independent accountant commented on any material inadequacies in accordance with paragraphs (g) and (h) of this section, and § 240.17a–11(e), there shall be a statement by the broker or dealer that a copy of such report and comments is currently available for the customer's inspection at the principal office of the Commission in Washington, DC, and the regional office of the Commission for the region in which the broker or dealer has its principal place of business; and

* * * * *

(h) * * *

(2) If, during the course of the audit or interim work, the independent public accountant determines that any material inadequacies exist in the accounting system, internal accounting control, procedures for safeguarding securities, or as otherwise defined in paragraph (g)(3) of this section, then the independent public accountant shall call it to the attention of the chief financial officer of the broker or dealer, who shall have a responsibility to inform the Commission and the designated examining authority by telegraphic or facsimile notice within 24 hours thereafter as set forth in § 240.17a–11 (e) and (g). The broker or dealer shall also furnish the accountant with a copy of said notice to the Commission by telegram or facsimile within said 24 hour period. If the accountant fails to receive such notice from the broker or dealer within said 24 hour period, or if the accountant disagrees with the statements contained in the notice of the broker or dealer, the accountant shall have a responsibility to inform the Commission and the designated examining authority by report of material inadequacy within 24 hours thereafter as set forth in § 240.17a–11(g). * * *

* * * * *

4. By revising § 240.17a–11 to read as follows:

§ 240.17a–11 Notification provisions for brokers and dealers.

(a) This section shall apply to every broker or dealer registered with the Commission pursuant to section 15 of the Act.

(b) Every broker or dealer whose net capital declines below the minimum amount required pursuant to § 240.15c3–1 shall give notice of such deficiency that same day in accordance with paragraph (g) of this section. The notice shall specify the broker or dealer's net capital requirement and its current amount of net capital. If a broker or dealer is informed by its designated examining authority or the Commission that it is, or has been, in violation of § 240.15c3–1 and the broker or dealer has not given notice of the capital deficiency under this § 240.17a–11, the broker or dealer, even if it does not agree that it is, or has been, in violation of § 240.15c3–1, shall give notice of the claimed deficiency, which notice may specify the broker's or dealer's reasons for its disagreement.

(c) Every broker or dealer shall send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (c)(1), (c)(2) or

(c)(3) of this section in accordance with paragraph (g) of this section:

(1) If a computation made by a broker or dealer subject to the aggregate indebtedness standard of § 240.15c3–1 shows that its aggregate indebtedness is in excess of 1,200 percent of its net capital; or

(2) If a computation made by a broker or dealer, which has elected the alternative standard of § 240.15c3–1, shows that its net capital is less than 5 percent of aggregate debit items computed in accordance with § 240.15c3–3a Exhibit A: Formula for Determination Reserve Requirement of Brokers and Dealers under § 240.15c3–3; or

(3) If a computation made by a broker or dealer pursuant to § 240.15c3–1 shows that its total net capital is less than 120 percent of the broker or dealer's required minimum net capital.

(d) Every broker or dealer who fails to make and keep current the books and records required by § 240.17a–3, shall give notice of this fact that same day in accordance with paragraph (g) of this section, specifying the books and records which have not been made or which are not current. The broker or dealer shall also transmit a report in accordance with paragraph (g) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(e) Whenever any broker or dealer discovers, or is notified by an independent public accountant, pursuant to § 240.17a–5(h)(2) of the existence of any material inadequacy as defined in § 240.17a–5(g), the broker or dealer shall:

(1) Give notice, in accordance with paragraph (g) of this section, of the material inadequacy within 24 hours of such discovery or notification; and

(2) Transmit a report in accordance with paragraph (g) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(f) Every national securities exchange or national securities association that learns that a member broker or dealer has failed to send notice or transmit a report as required by paragraphs (b), (c), (d), or (e) of this section, even after being advised by the securities exchange or the national securities association to send notice or transmit a report, shall immediately give notice of such failure in accordance with paragraph (g) of this section.

(g) Every notice or report required to be given or transmitted by this section shall be given or transmitted to the principal office of the Commission in Washington, D.C., the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the designated examining authority of which such broker or dealer is a member, and the Commodity Futures Trading Commission if the broker or dealer is registered as a futures commission merchant with such Commission. For the purposes of this section, "notice" shall be given or transmitted by telegraphic notice or facsimile transmission. The report required by paragraphs (d) or (e)(2) of this section may be transmitted by overnight delivery.

(h) Other notice provisions relating to the Commission's financial responsibility or reporting rules are contained in § 240.15c3–1(a)(6)(iv)(B), § 240.15c3–1(a)(6)(v), § 240.15c3–1(a)(7)(iv), § 240.15c3–1(c)(2)(x)(B)(*1*), § 240.15c3–1(c)(2)(x)(F)(*3*), § 240.15c3–1(e), § 240.15c3–1d(c)(2), § 240.15c3–3(i) and § 240.17a–5(h)(2).

Dated: July 7, 1993.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16480 Filed 7–12–93; 8:45 am]
BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FL–044–5614; FRL–4655–3]

40 CFR Part 52

Approval and Promulgation of Implementation Plans Florida: Approval of Revisions to the Volatile Organic Compound (VOC) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approves revisions to the Florida State Implementation Plan (SIP) to include the VOC Capture Efficiency Test Procedures rule to the Florida Administrative Code, Chapter 17–2. These revisions were submitted to EPA on January 15, 1992, in response to the May 1988 SIP call for areas in Florida which were not achieving the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the section 182(a)(2)(A) of the Clean Air Act requirement for States to correct their Reasonably Available Control Technology (RACT) rules. The revisions approved today correct the remaining deficiencies identified by EPA in Florida's VOC SIP, including all the submittals required under section 182(a)(2)(A) of the Act. Details regarding each revision being approved are discussed in the Supplementary Information section of this document.

EFFECTIVE DATE: This action will be effective September 13, 1993 unless notice is received by August 12, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the material submitted by the State of Florida may be examined during normal business hours at the following locations:

Environmental Protection Agency, Public Information Reference Unit, Attn: Jerry Kurtzweg, ANR 443, 401 M Street, SW., Washington DC 20460

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365

Air Resources Management Division, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400

FOR FURTHER INFORMATION CONTACT: Leonardo Ceron of the EPA Region IV, Air Programs Branch at 404–347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On May 26, 1988, EPA notified the Governor of Florida that areas of the State had failed to attain the NAAQS for ozone. Since the EPA approved attainment date of December 31, 1987, had passed, the Florida SIP was declared substantially inadequate to achieve the NAAQS for ozone. EPA requested that Florida respond to the SIP call in two phases. The Phase I response was due approximately one year following issuance of the SIP call. A Phase II response would have been due at a date specified following issuance of final EPA policy program requirements for ozone and CO non-attainment areas. However, the requirements and schedule for the Phase II SIP call are now provided in the Clean Air Act as amended in 1990. On June 15, 1989, August 24, 1990, and October 24, 1991, the Florida Environmental Regulation Commission approved the revisions to the Florida VOC regulations. The Florida Department of Environmental Regulation submitted these revisions of the Florida VOC regulation to EPA on August 16, 1989, August 27, 1990, and January 15, 1992. Florida requested that the revisions be adopted as part of the federally approved SIP. EPA approved the revisions submitted on August 16, 1989, and August 27, 1990, in an October 17, 1991, **Federal Register** notice (see 56 FR 51982). With this SIP revision the State of Florida has fulfilled

the phase II of the VOC regulations deficiencies stated above. EPA is therefore deleting 40 CFR 52.531 in its entirety. EPA is today approving the following revisions:

I. In Section 17–2.100, Definitions: "Building Enclosure," "Capture," "Capture Efficiency," "Control Device," "Control System," "Destruction or Removal Efficiency," "Gas/Gas Method," "Hood," "Liquid/Gas Method," "Overall Emission Reduction Efficiency," "Permanent Total Enclosure," "Removal Efficiency," "Temporary Total Enclosure," which define terms used in capture efficiency testing. Revised definitions are "Capture System," "Carbon Absorption System," and "Volatile Organic Compound (VOC)," all of which are consistent with current Agency policy.

II. Section 17–2.650, VOC RACT Rule, Emission limiting standards for surface coating operations has been amended to require compliance calculations for sources complying on a basis other than low solvent technology to be measured in units of pounds VOC/gallon of solids as applied.

III. Section 17–2.700 (6)(c) 7, Stationary Point Source Emission Test Procedures, adoption of the April 16, 1990, EPA established capture efficiency testing methods for sources of VOC.

This SIP revision is being approved because it meets the requirements set forth in the Clean Air Act as amended in 1990 and complies with the April 16, 1990, EPA's technical guidance memorandum dated Guidelines For Developing A State Protocol For The Measurement Of Capture Efficiency (CE).

Based on the instructions from the 1992 United States executive administration, Federal regulations are being reviewed to minimize their cost to industry. In response to this executive instruction EPA's Office of Air Quality Planning and Standards (OAQPS) is currently undertaking a study to develop and review possible alternatives to the recommended gas-gas and liquid-gas method which specifies a temporary total enclosure (TTE) to measure CE. The results will provide a comparative evaluation of the cost effective alternatives to measure CE with the TTE method. On April 6, 1992, EPA Region IV notified affected States that the requirement to adopt CE methods would be postponed until completion of the study. However, any CE test method proposed by the State can be approved if it complies with current CE test method regulations. On April 6, 1992, FDER requested that this CE test method be approved into the SIP.

Final Action

EPA is today approving the revisions to the Florida Volatile Organic Compound air quality regulations listed above. All of the revisions being approved are consistent with Agency policy.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In the amended Act, Congress codified the requirement that States with areas classified as marginal or above revise their SIPs for these classified ozone nonattainment areas so that the SIPs conform with EPA's preamendment guidance.[1]

Section 182(a)(2)(A) established a deadline of May 15, 1991, for submittal of these RACT "fix-ups", the CE test method was one of those RACT "fix-ups." However, based on the March 20, 1992, memorandum from the Director of OAQPS, this deadline has been extended for the CE test method to all States which have not submitted the CE test method regulations until the results of the current CE test method measurement cost comparison study have been determined.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from date of this **Federal Register** notice. However, if notice is received within 60 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 1993. Filing a petition for reconsideration by the Administrator of the final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone,

[1] Among other things, the preamendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cut points, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan (SIP) for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 13, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(76) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(76) The Florida Department of Environmental Regulation submitted revisions to chapter 17–2 of the Florida Administrative Code which were submitted on January 14, 1992. These revisions incorporate Capture Efficiency Test Procedures for Volatile Organic Compound sources into the Florida Administrative Code.

(i) Incorporation by reference.

(A) Florida Administrative Code (FAC) 17–2.100 (32), (37), (38), (39), (40), (60), (61), (68), (95), (101), (117), (155), (163), (180), (218), (237), effective December 31, 1991.

(B) FAC 17–2.650(1)(f) Introductory paragraph, 1., 2., 3., 4., 5., 6., 7., 12., 14., 15., and 16., effective December 31, 1991.

(C) FAC 17–2.700(6)(c)7, effective December 31, 1991.

(D) FAC 17–2.700(7), effective December 31, 1991.

(ii) Other material—NONE.

3. Section 52.531 is removed.

[FR Doc. 93–16363 Filed 7–12–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107–3068; I.D. 070793A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 7, 1993, through 12 noon, A.l.t., October 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Martin Loefflad, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 62 is 4,420 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 third quarterly allowance of pollock TAC in Statistical Area 62 will soon be reached. The Regional Director established a directed fishing allowance of 3,920 mt, and has set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 62, effective from 12 noon A.l.t., July 7, 1993, through 12 noon, A.l.t., October 1, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 7, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–16473 Filed 7–7–93; 3:09 pm]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 930487–3161; I.D. 040593A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; revision to Final 1993 Initial Specifications of Groundfish.

SUMMARY: NMFS announces the approval of Amendment 28 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management area (BSAI), which establishes three new management districts in the Aleutian Islands subarea (AI), amends the Final 1993 Initial Specifications of Groundfish and Prohibited Species Catch Allowances for the BSAI (1993 Specifications), and implements amendments to clarify existing regulations. These actions are necessary for conservation and management of the BSAI groundfish fisheries. They are intended to further the goals and objectives contained in the FMP.

EFFECTIVE DATE: August 11, 1993.

ADDRESSES: The final rule was analyzed as part of the environmental assessment/regulatory impact review (EA/RIR) prepared for Amendment 28. Individual copies of Amendment 28 and the EA/RIR may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Fisheries Management Biologist, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI are managed by the Secretary of Commerce (Secretary) in accordance with the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations governing the U.S. fishery at

50 CFR part 675. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

Amendment 28 to the FMP was approved by the Secretary on June 24, 1993, under section 304(b) of the Magnuson Act. This amendment establishes three new management districts in the AI for the purpose of apportioning total allowable catch (TAC) of groundfish, thereby improving TAC management, dispersing fishing effort, and minimizing the potential for undesirable effects of concentrated fishing effort. A notice of availability was published in the Federal Register on April 12, 1993 (58 FR 19087), and invited comments on the amendment through June 7, 1993. No written comments were received.

A proposed rule was published in the Federal Register on April 23, 1993 (58 FR 21695), that would (1) establish statistical reporting areas corresponding to the three new AI districts under authority provided by Amendment 28 to the FMP, (2) amend the 1993 Specifications (58 FR 8703, February 17, 1993), and (3) clarify existing regulations. The preamble to the proposed rule provides background information and presents a full description of, and the need and justification for, each proposed action. This rule contains a collection-of-information requirement under the Paperwork Reduction Act already authorized under OMB 0648–0213, and has only minor effects on check-in reporting for at-sea processor vessel operators who elect to operate in the new districts. Public comment on the proposed rule was invited through June 4, 1993. One letter supporting the proposed action was received during the comment period and is responded to below in the "Response to Comments" section. Upon reviewing the reasons for, and the comments on, this action, NMFS has determined that this rule is necessary for conservation and management and has approved it. The final rule implements the following three management measures.

1. Establishment of the Eastern, Central, and Western Districts of the Aleutian Islands Subarea

The final rule establishes three statistical reporting areas within the AI that coincide with the new FMP districts: the Eastern, Central, and Western Aleutian Districts. The boundary between the Eastern and Central Districts is at 177°W. longitude, and between the Central and Western Districts is at 177°E. longitude. These districts are described in definitions at § 675.2.

2. Revision of Final 1993 Initial Specifications for Atka Mackerel

Under the authority of regulations implementing Amendment 28, the 1993 Specifications for Atka mackerel (Table 1, Amended) are amended to facilitate a potential increase in the amount of Atka mackerel TAC available for harvest during 1993. The 1993 acceptable biological catch (ABC) and TAC for Atka mackerel previously specified for the BSAI at 58 FR 8703 is divided among the new AI districts and the Bering Sea subarea (BS) in accordance with the distribution of Atka mackerel from the 1991 stock assessment survey. Any TAC increase for a district or districts, anticipated to be recommended by the Council during 1993, may be accomplished inseason by apportioning amounts from the non-specific operational reserve to Atka mackerel under regulations at § 675.20(a)(3).

Table 1, Amended. Final 1993 Acceptable Biological Catch (ABC), Total Allowable Catch (TAC), Initial TAC (ITAC), and ITAC Apportionments of Groundfish in the Bering Sea and Aleutian Islands Area (1) (2).

Species	ABC	TAC	Initial TAC (ITAC)=DAP (3)(4)
* * * * *	*	*	*
Atka mackerel:			
Eastern AI District/BS	12,881	3,520	2,992
Central AI District	52,695	14,400	12,240
Western AI District	51,524	14,080	11,968
* * * * *	*	*	*

3. Technical Amendments to Existing Regulations

The final rule deletes Statistical area 540, adds Statistical areas 541, 542, and 543 to implement the three new AI management districts established under this rule, and adds references to the new districts as appropriate. Other amendments are incorporated to clarify or correct existing regulations: (1) To conform with the current format used by the Office of the Federal Register; (2) to clarify that the Bogoslof District is a district within the BS subarea; (3) to remove an obsolete map of the BSAI and correct figure references accordingly; and (4) to facilitate future additions of districts numbered between 500 and 539.

Specific Changes From the Proposed Rule in the Final Rule

This rule divides the 1993 ABC and TAC specified for Atka mackerel into three separate apportionments for the Eastern Aleutian District and the BS, Central Aleutian District, and Western Aleutian District, according to the distribution of Atka mackerel biomass in those areas found in the 1991 stock assessment survey. The proposed rule at 58 FR 21695 based the amounts of Atka mackerel for distribution to the Eastern AI/BS, Central AI, and Western AI Districts on: 10.8 percent; 44.7 percent; and 44.5 percent, respectively. For clarity and ease of calculation, this final rule revises Table 1 to reflect amounts of Atka mackerel ABC and TAC in the new districts based on the percent of biomass distribution rounded to the nearest whole number: 11 percent; 45 percent; and 44 percent, respectively.

Response to Comments

One letter of comment was received during the comment period. This comment is summarized and responded to below:

Comment 1: Division of the AI subarea is necessary to improve management, disperse fishing effort, and minimize the potential for undesirable effects of concentrated fishing effort. Industry will benefit from a potential TAC increase for Atka mackerel because it will provide an alternative fishery to other overcapitalized, highly competitive fisheries.

Response: NMFS concurs and approves this rule.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that Amendment 28 is necessary for the conservation and management of groundfish fisheries in the BSAI and that it is consistent with the Magnuson Act and other applicable laws.

NMFS prepared an EA for Amendment 28 and the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule. A coy of the EA may be obtained (see **ADDRESSES**).

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the EA/RIR prepared by NMFS. A copy of the EA/RIR may be obtained (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared. This determination is based on the EA/RIR prepared by NMFS. This rule creates new management districts, a management tool the Council may subsequently use to geographically apportion TACs, but would not directly alter apportionments of groundfish, or change participation in groundfish fisheries. Additional discussion is contained in the EA/RIR, a copy of which may be obtained (see **ADDRESSES**).

This rule contains a collection-of-information already authorized by OMB 0648–0213 requirement for purposes of the Paperwork Reduction Act.

NMFS determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. The State agency did not comment within the statutory time period, and, therefore, consistency is automatically inferred.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Informal consultations pursuant to section 7 of the Endangered Species Act (ESA) were concluded for Amendment 28 by NMFS for the Steller sea lion, Snake River spring/summer and fall chinook salmon, and Snake River sockeye salmon, and by the U.S. Fish and Wildlife Service for the short-tailed albatross, spectacled eider, and other seabirds which are proposed or candidates for listing under the ESA. Referenced consultations were concluded for Amendment 28 as follows: for the Steller sea lion on March 30, 1993; for listed species of salmon on June 7, 1993; and for seabirds on April 14, 1993. The informal consultations concluded that adoption of this rule will not affect endangered, threatened, proposed or candidate species or their habitat under jurisdiction of NMFS or the U.S. Fish and Wildlife Service, in a manner or to an extent not already considered in prior consultations. Therefore, further consultation under section 7 of the ESA is not required.

The Regional Director has determined that fishing activities conducted under this rule will have no adverse impacts on marine mammals.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: July 7, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

PART 657—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.2, the definitions of "Bycatch limitation zone 1", "Bycatch limitation zone 2", and "Bycatch limitation zone 2H" are amended by removing the words "Figure 5" and adding in their place the words "Figure 2" and adding in their place the words "Figure 1"; the definition of "Length overall" is amended by removing the words "Figure 1" and adding in their place the words "Figure 2"; in the definition of "Pelagic trawl" paragraph (1) is amended by removing the words "Figure 4" and adding in their place the words "Figure 3"; in the definition of "Pelagic trawl" paragraph (2) is amended by removing the words "Figure 5" and adding in their place the words "Figure 4"; the definitions of "Bering Sea and Aleutian Islands management area", and "Fishery" are revised; and the definition of "Statistical Area" is amended by redesignating paragraphs (a) through (l) as paragraphs (1) through (12), revising the introductory text and newly designated paragraph (12), and adding paragraphs (13) and (14) to read as follows:

§ 675.2 Definitions

* * * * *

Bering Sea and Aleutian Islands management area means the exclusive economic zone (EEZ) in the Bering Sea, and that portion of the EEZ in the North Pacific Ocean that is adjacent to the Aleutian Islands and west of 170°00′ W. longitude.

(1) The Bering Sea subarea means that portion of the Bering Sea and Aleutian Islands management area exclusive of the Aleutian Islands subarea.

(i) The Bogoslof District of the Bering Sea subarea means Statistical area 518 as defined in this section.

(ii) [Reserved]

(2) The Aleutian Islands subarea means that portion of the Bering Sea and Aleutian Islands management area south of 55° N. latitude and west of 170° W. longitude.

(i) The Eastern Aleutian District means Statistical area 541 as defined in this section.

(ii) The Central Aleutian District means Statistical area 542 as defined in this section.

(iii) The Western Aleutian District means Statistical area 543 as defined in this section.

* * * * *

Fishery, for the purposes of this part, means all fishing for groundfish that is conducted in the Bering Sea and Aleutian Islands management area and adjacent territorial waters.

* * * * *

Statistical area means any one of the 14 geographical units of the Bering Sea and Aleutian Islands management area defined as follows (Figure 1):

* * * * *

(12) Statistical area 541 south of 55° N. latitude and between 170°00′ W. longitude and 177°00′ W. longitude.

(13) Statistical area 542—south of 55° N. latitude and between 177°00′ W. longitude and 177°00′ E. longitude.

(14) Statistical area 543—south of 55° N. latitude and west of 177°00′ E. longitude.

* * * * *

3. In § 675.20, paragraph (j)(1) is amended by revising the first sentence, and paragraph (j)(4) is revised to read as follows:

§ 675.20 General limitations.

* * * * *

(j) * * *

(1) For purposes of this paragraph (j), only one primary product per fish, other

than roe, may be used to calculate the round-weight equivalent. * * *

* * * * *

(4) *Fishing trip.* For purposes of this paragraph (j), a vessel is engaged in a fishing trip when commencing or resuming the harvesting, receiving, or processing of pollock until the transfer or offloading of any pollock or pollock product or until the vessel leaves the subarea or district where fishing activity commenced, whichever comes first.

* * * * *

4. In § 675.24, the section heading is revised, the introductory text of the section is removed, and paragraphs (c)(1)(i), (c)(1)(ii), (d)(1), (d)(2), and the introductory text of paragraph (f)(1) are revised to read as follows:

§ 675.24 Gear limitations.

* * * * *

(c) * * *

(1) * * *

(i) In the Bering Sea subarea, hook-and-line and pot gear may be used to take up to 50 percent of each TAC for sablefish; trawl gear may be used to take up to 50 percent of each TAC for sablefish.

(ii) In the Aleutian Islands subarea, hook-and-line and pot gear may be used to take up to 75 percent of each TAC for sablefish; trawl gear may be used to take up to 25 percent of each TAC for sablefish.

* * * * *

(d) * * * (1) When the Regional Director determines that the share of each sablefish TAC assigned to any type of gear for any year and any subarea or district under paragraph (c) of this section may be taken before the end of that year, NMFS, in order to provide adequate bycatch amounts to ensure continued groundfish fishing activity by that gear group, will, by publication in the **Federal Register**, prohibit directed fishing for sablefish by persons using that type of gear in that subarea or district for the remainder of the year.

(2) When the Regional Director determines that the share of each sablefish TAC assigned to any type of gear for any year and any subarea or district under paragraph (c) of this section is or will be reached, NMFS will, by publication in the **Federal Register**, require that sablefish be treated as a prohibited species by persons using that type of gear in that subarea or district for the remainder of that year.

* * * * *

(f) * * *

(1) Bering Sea subarea.

* * * * *

§§ 675.2, 675.20, and 675.27 [Amended]

5. In addition to the amendments set forth above, in 50 CFR part 675 remove the work "subarea" and add, in its place, the words "subarea or district" in the following places:

a. Section 675.2, in the definition of "Community Development Quota Reserve (CDQ reserve)";

b. Section 675.20(a)(2)(ii), (a)(2)(iii), (a)(3)(ii) [2 times], (a)(3)(iii), and (a)(8) [3 times]; and

c. Section 675.27(b)(1)(ii) and (c)(1).

§ 675.22 [Amended]

6. In § 675.22, paragraph (a) is amended by removing the words "figure 1" and adding in their place the words "figure 1".

7. Figure 1 of the part is removed; Figures 2 through 5 of the part are redesignated Figures 1 through 4 of the part; and newly designated Figure 1 is revised to read as follows:

BILLING CODE 3510-22-M

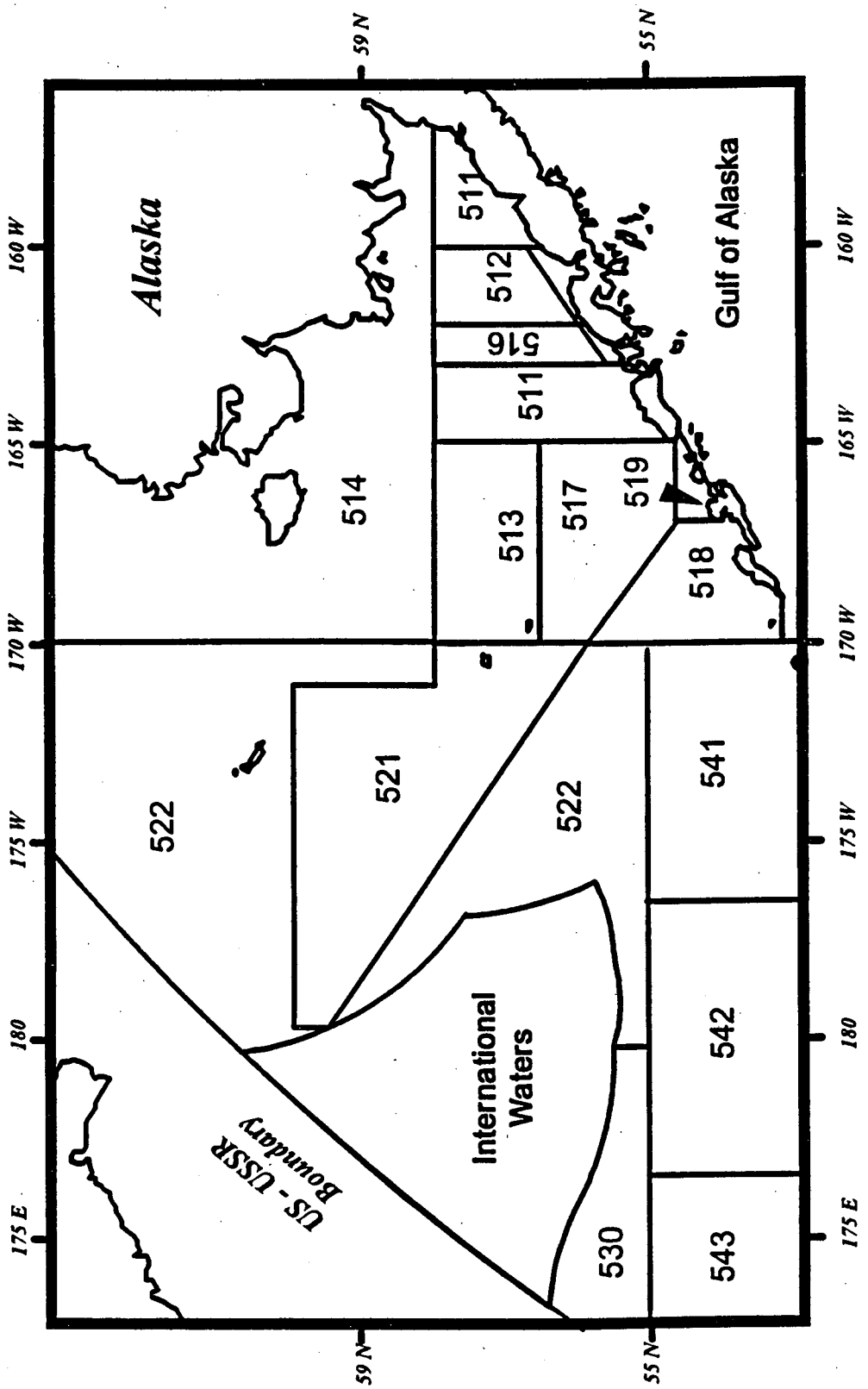

Figure 1. Reporting areas and bycatch limitation zones in the Bering Sea and Aleutian Islands Management Area.

Zone 1 = 511+512+516;
Zone 2 = 513+517+521; and
Zone 2H = 517.

[FR Doc. 93-16523 Filed 7-12-93; 8:45 am]
BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 58, No. 132
Tuesday, July 13, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93-022-1]

Brucellosis Ring Test

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to brucellosis ring tests in Class Free States or areas. Currently, Class Free States or areas must conduct brucellosis ring tests at least four times per year at approximately 90-day intervals and ensure that every commercial dairy herd is included in at least three of the four tests. We are proposing to require instead that Class Free States or areas conduct as many brucellosis ring tests per year as are necessary to ensure that every commercial dairy herd is tested at least twice per year at approximately 6-month intervals. We believe that the current requirement is no longer necessary to ensure adequate brucellosis surveillance in Class Free States or areas, and that the proposed amendment would reduce testing requirements without increasing the risk of the interstate spread of brucellosis.

DATES: Consideration will be given only to comments received on or before August 12, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-022-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis Epidemiologist, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-4918.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is an infectious disease of animals and humans; in its principal animal hosts, it is characterized by abortion and impaired fertility. Federal and State animal health officials are working cooperatively to eradicate brucellosis from domestic livestock and bison. To help prevent the spread of the disease, the regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine.

The regulations set forth terms used to classify States or areas according to levels of the eradication process. Under the regulations, States or areas can be classified as Class Free (meaning there are no cattle herds under quarantine for brucellosis and there is no known uncontrolled foci of brucellosis in any other species of domestic livestock), Class A, Class B, or Class C. Section 78.1 outlines the procedures States or areas must follow to attain and maintain each level.

The regulations currently require, among other things, that all States or areas that are Class Free conduct brucellosis ring tests (BRT) at least four times per year at approximately 90-day intervals. The BRT is a diagnostic test conducted on composite milk or cream samples from dairy herds. The samples are collected from milk receiving stations, dairy processing plants, or individual dairy farms.

For several reasons, including the fact that many small dairy herds are not in production year-round, the States cannot always ensure that all commercial herds are included in each of the four quarterly tests. In many cases, by the time animal health officials become aware that a particular herd was not included in the most recent BRT, the next test is about to take place. Because we recognize the difficulties involved in this process and because it would be impractical to require the States or areas to conduct an individual BRT on a missed herd when the next test is about to occur, the regulations do not require the States or areas to include all commercial dairy herds in each of the quarterly tests. However, the Class Free States or areas must ensure that every herd that produces milk for sale is included in at least three tests per year. The States or areas may conduct more BRT's per year if necessary to ensure that this occurs.

Because the BRT is a highly sensitive test that detects an animal's immune response to brucellosis, it produces positive readings for cattle that are infected with brucellosis as well as cattle that have been vaccinated against the disease. As a result, animal health officials in Class Free States or areas with large numbers of commercial dairy herds must spend a significant amount of time and resources investigating "false positives."

For this reason, the United States Animal Health Association has petitioned the Department to reduce the minimum annual BRT requirement for Class Free States or areas to two, conducted at 6-month intervals. Upon review of this request, we agree that two tests per year, conducted at approximately 6-month intervals, of every commercial dairy herd in a Class Free State or area would allow an acceptable level of disease surveillance to be maintained. With only 12 U.S. dairy herds known to be infected with brucellosis as of March 1993, we believe the degree of risk of reinfection in dairy herds in Class Free States or areas to be minimal at this time. Moreover, we believe any infection that might occur could be adequately detected and controlled in the proposed 6-month timeframes.

Therefore, we are proposing to amend 9 CFR part 78 to remove the requirements for Class Free States or areas to conduct BRT's at least four times per year at approximately 90-day intervals and ensure that every commercial dairy herd is included in at least three of the four tests. Instead, we are proposing to require Class Free States or areas to conduct as many BRT's per year as are necessary to ensure that every commercial dairy herd is tested at least twice per year at approximately 6-month intervals. It is feasible that some Class Free States or areas would need to conduct only two

BRT's per year. We believe this change would ease the burden on State animal health officials of investigating false positive BRT results without negatively affecting the continued progress of Federal and State brucellosis eradication efforts.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Only State and Federal animal health agencies would be affected by this proposed rule; it would have no effect on the private sector. Animal health officials would need to collect and test milk samples at least twice per year instead of at least four times per year. These agencies do not charge for collecting and testing the samples.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78, Subpart A, would be amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, in the definition of *Class Free State or area,* paragraph (a)(1) would be revised to read as follows:

§ 78.1 Definitions.

* * * * *

(a) *Surveillance*—(1) *Brucellosis ring test.* The State or area shall conduct as many brucellosis ring tests per year as are necessary to ensure that all herds producing milk for sale are tested at least twice per year at approximately 6-month intervals.

* * * * *

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16540 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 85

[Docket No. 92–170–1]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the pseudorabies regulations by adding the Particle Concentration Fluorescence Immunoassay (PCFIA) test to the list of official tests for pseudorabies. The PCFIA test is an effective diagnostic test that can be conducted in less time than other diagnostic tests currently allowed. Adding the PCFIA test to the list of official tests for pseudorabies will help prevent the spread of the disease by making available an additional means by which animal health personnel may obtain timely and accurate diagnoses of pseudorabies.

DATES: Consideration will be given only to comments received on or before September 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–170–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202–690–2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold C. Taft, Senior Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, room 735, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine, and other animals. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus. The regulations in 9 CFR part 85 (referred to below as "the regulations") govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies.

Official pseudorabies tests are used under certain circumstances to determine the pseudorabies status of swine. The regulations require that certain swine test negative to an official pseudorabies test before they may be moved interstate.

The Particle Concentration Fluorescence Immunoassay (PCFIA) test is an automated serologic test that has been used since 1988 to test for brucellosis in cattle and bison. Testing conducted by Animal and Plant Health Inspection Service (APHIS) personnel at the National Veterinary Services Laboratories (NVSL) in Ames, IA, has shown that the PCFIA test is an effective test for pseudorabies in swine and affords a high degree of sensitivity, specificity, and reproducibility. Additionally, the PCFIA test can be conducted in less time than other official diagnostic tests for pseudorabies. The effectiveness and speed of the PCFIA test would make the test a valuable tool in the effort to reduce the spread of pseudorabies in the United States. Therefore, we are proposing to amend the regulations by adding the PCFIA test to the list of official pseudorabies tests.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order

12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action would provide for the use of an additional official test for determining whether an animal is infected with pseudorabies. The testing requirements for pseudorabies would not change. Moreover, the use of the PCFIA test would not affect the market price for swine. Although the date of sale may change as a result of the faster testing, the economic effect on swine producers would not be significant.

According to information gathered by APHIS, animal health authorities in nine States have expressed interest in using the PCFIA test to test for pseudorabies in swine. Of those nine States, six already own PCFIA equipment, which they currently use in brucellosis testing. The PCFIA test for pseudorabies can be run on either a fully automated Screen Machine, which has a list price of $62,000, or a semi-automated FCA Machine, which has a list price of $27,000; used and reconditioned machines may be obtained at lower cost, according to the manager of the Livestock Business Unit at IDEXX Laboratories, Westbrook, ME (January 1993).

Of the five currently approved official pseudorabies tests, the one most often used is the enzyme-linked immunosorbent assay (ELISA) test. A HerdChek® ELISA screening kit for pseudorabies contains 480 tests and costs $187.20, or $0.39 per test. In comparison, a PCFIA pseudorabies screening kit contains 4,800 tests and costs $1,776, or $0.37 per test. When the per-test savings is added to anticipated savings in time and personnel costs, we estimate that the PCFIA could cost as much as $0.07 less per test than the ELISA test. If the $0.07 per-test savings were applied to the 1.19 million pseudorabies tests run during Fiscal Year (FY) 1992 in the nine States interested in using the PCFIA, those States would realize a total savings of $83,000 for the year. Some States require swine producers, nearly all of which are considered to be small entities, to pay a share of test costs. In the nine States that have expressed an interest in using the PCFIA, the savings to swine producers would work out to approximately $25,000 for the tests run in FY 1992.

Because of the small dollar savings that could be expected, and because its use would be optional, we anticipate that adding the PCFIA test to the list of official pseudorabies tests would have only a negligible economic impact on State animal health agencies and affected swine producers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 85 would be amended as follows:

PART 85—PSEUDORABIES

1. The authority citation for part 85 would continue to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 85.1, the definition of "Official pseudorabies test" would be amended by removing the words "tests and 5. Latex Agglutination Test (LAT)" and replacing them with the words "tests; 5. Latex Agglutination Test (LAT); and 6. Particle Concentration Fluorescence Immunoassay (PCFIA) Test".

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-16541 Filed 7-12-93; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 91

[Docket No. 93-016-1]

Ports Designated for the Exportation of Animals; Kentucky and New Jersey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Inspection and Handling of Livestock for Exportation regulations by designating Standiford Field Airport in Louisville, KY, as a port of embarkation. Newton Paddocks (already listed in the regulations) would serve as the export inspection facility for that port. We are also proposing to designate Woodstown, NJ, as a port of embarkation and Deep Hollow Farm as an export inspection facility for that port. These two ports and Deep Hollow Farm appear to meet the requirements of the regulations for designation as ports of embarkation and an animal export inspection facility, respectively. These actions would add two ports and an inspection facility through which horses may be processed for export.

DATES: Consideration will be given only to comments received on or before September 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-016-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information concerning the Kentucky port, contact Dr. Michael David, Senior Staff Veterinarian, National Center for Import Export, VS, APHIS, USDA, room

761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7511.

For information concerning the New Jersey port, contact Dr. Najam Faizi, Senior Staff Veterinarian, National Center for Import Export, VS, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations state, among other things, that all animals, except animals being exported to Canada or Mexico, must be exported through designated ports of embarkation.

To receive designation as a port of embarkation, a port must have export inspection facilities available for the inspection, holding, feeding, and watering of animals prior to exportation to ensure that the animals meet certain requirements specified in the regulations. To receive approval as an export inspection facility, the regulations provide that a facility must meet specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

Newton Paddocks, Barn No. 8, Newton Pike, Lexington, KY 40511, (606) 253–3456, meets the requirements of § 91.14(c) and is listed in the regulations as an export inspection facility for horses for the Greater Cincinnati Airport. Standiford Field Airport in Louisville, KY, is more convenient for some horse exporters than the Greater Cincinnati Airport, and is at approximately an equal distance from Newton Paddocks as the Greater Cincinnati Airport. Newton Paddocks is large enough to service both ports. Therefore, we propose to add Standiford Field Airport to the regulations as a port of embarkation, to be serviced by Newton Paddocks export facility.

Deep Hollow Farm, RD 2, P.O. Box 360, Haines Neck Road, Woodstown, NJ 08098, (609) 769–0993, appears to meet the requirements of § 91.14(c), with respect to horses, for designation as an export inspection facility. This facility is accessible to exporters who wish to use the ocean port in Woodstown to export horses. Therefore, we also propose to add the ocean port at Woodstown, NJ, to the regulations as a port of embarkation and Deep Hollow Farm as an export inspection facility, for horses only, for that port.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We believe that adding the Standiford Field Airport in Louisville, KY, and the ocean port at Woodstown, NJ, as ports of embarkation for horses would have little or no economic impact on horse exporters, the majority of which are small businesses, because it would not significantly change the cost of doing business.

Currently, the State of Kentucky is serviced by the Greater Cincinnati Airport as a port of embarkation for horses. Our proposal to add the Standiford Field Airport as a designated port of embarkation would not increase the number of horses embarking from Kentucky. This action would simply facilitate the export of horses for some exporters in Kentucky for whom the Standiford Field Airport is more convenient than the Greater Cincinnati Airport.

There are no ports in New Jersey designated in the regulations as ports of embarkation for horses. Currently, horse exporters in New Jersey must go out of State to a port of embarkation, such as New York, NY, to export their horses. While these exporters may realize some savings in transportation costs if our proposal to add the ocean port at Woodstown, NJ, as a port of embarkation for horses is made final, the primary benefit would be the increased convenience of having a designated port of embarkation in their own State.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 would continue to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 91.14, paragraphs (a)(10) through (a)(17) would be redesignated as paragraphs (a)(11) through (a)(18), paragraph (a)(5)(i) would be revised, and a new paragraph (a)(10) would be added to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(5) * * *

(i) Greater Cincinnati Airport, Covington; and Standiford Field Airport, Louisville—airport only.

* * * * *

(10) *New Jersey.*

(i) Woodstown—ocean port.

(A) Deep Hollow Farm (horses only), RD 2, P.O. Box 360, Haines Neck Road, Woodstown, NJ 08098, (609) 769–0993.

* * * * *

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16542 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 95

[Docket No. 92–135–1]

Importation of Hoofs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal byproduct importation regulations to allow hoofs that have been disinfected in their country of origin to be imported into the United States without further processing. Currently, certain hoofs imported into the United States must be consigned from the port of first arrival to an approved establishment having facilities for their disinfection. We have determined, however, that hoofs that have been adequately disinfected in their country of origin may be imported into the United States without risk of introducing disease. This proposed change in the regulations would give importers of hoofs that require disinfection a choice between importing disinfected hoofs and importing unprocessed hoofs for disinfection in the United States.

DATES: Consideration will be given only to comments received on or before September 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–135–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Gray, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 95 (referred to below as "the regulations") contain restrictions on the importation into the United States of certain animal byproducts and hay and straw in order to prevent the introduction of certain animal diseases. Among the regulated animal byproducts are animal hoofs, which, along with bones and horns, may be imported subject to the restrictions contained in §§ 95.11 and 95.12.

Hoofs that are clean, dry, and free from undried pieces of hide, flesh, and sinew may be imported as trophies or for consignment to museums without other restrictions under the provisions of § 95.11. Section 95.12 contains handling and treatment requirements for imported hoofs that do not meet the conditions or requirements of § 95.11.

Under the provisions of § 95.12, hoofs that are not imported as trophies or for consignment to museums must be consigned directly from the port of entry to an approved establishment that has facilities for their disinfection. The bags, burlap, or other containers in which the hoofs are transported must also be disinfected. While the hoofs are at the approved facility, they must be handled, under the direction of an Animal and Plant Health Inspection Service (APHIS) inspector, in a manner to guard against the dissemination of anthrax, foot-and-mouth disease, and rinderpest. With APHIS approval, the hoofs may be released from the establishment after disinfection.

Several methods of treatment are available for use by the establishments in which the hoofs are disinfected. These methods are shown in the table below. Although some establishments soak the hoofs in chemical solutions, hoofs are most often disinfected by exposure to high heat, either dry or wet.

Disinfection treatment	Time
Heating: 180 °F (82.2 °C)	30 minutes.
Soaking: Boiling water	20 minutes.
Soaking: 0.1% chlorine bleach solution.	2 hours.
Soaking: 5% acetic acid solution.	2 hours.
Soaking: 5% hydrogen peroxide solution.	2 hours.

Some U.S. importers of hoofs have expressed interest in importing hoofs that have been disinfected in their country of origin prior to being shipped to the United States. Such an option would give the importers a greater degree of flexibility, allowing them to choose between importing unprocessed hoofs that would require disinfection upon arrival in the United States or importing disinfected hoofs that could be imported without additional treatment. APHIS has determined that as long as the hoofs are adequately disinfected in their country of origin by one of the five approved methods listed above, they could be imported into the United States without increasing the risk of disease introduction. Therefore, we are proposing to amend the regulations to allow hoofs that have been disinfected in their country of origin, using one of the methods shown in the table above, to be imported into the United States without additional treatment.

We would require that the hoofs be accompanied by a certificate stating that they have been disinfected and describing the manner in which the disinfection was accomplished. The certificate would have to be issued by the national government of the country of origin and signed by an official veterinary inspector of that country. Upon their arrival in the United States, the hoofs would be examined by an APHIS inspector, who would confirm that the hoofs were clean, dry, and free from undried pieces of hide, flesh, and sinew.

This proposed rule, if adopted, would offer a choice of importation procedures, both of which would provide adequate safeguards to prevent the introduction of disease.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Currently, certain hoofs imported into the United States must be consigned directly from the port of entry to an approved establishment that has facilities for their disinfection. This proposed rule would allow hoofs to be imported into the United States without further processing if the hoofs have been disinfected using an approved method

in their country of origin. We believe that adding this option would have little or no economic impact on U.S. importers of hoofs because it would not significantly decrease their cost of doing business. The primary impact on these importers would be the added convenience of having two importation options from which to choose.

The primary use of disinfected hoofs appears to be in the production of dog chews, but that industry is still in its infancy and is rather small in terms of production and numbers of producers. Based on information available to the Department, we estimate that there are currently fewer than 10 importers of hoofs and approximately 6 producers of dog chews made from hoofs. Using the Small Business Administration's size criteria of fewer than 100 employees, all of these businesses would be considered to be small entities.

We believe that a few of these businesses receive hoofs from both foreign and domestic sources. Because the industry is small and relatively new, however, there are no records available concerning the number of hoofs imported into the United States or the levels of dog chew production.

The facilities in which hoofs are disinfected handle a variety of items, with hoofs making up only a small percentage of the total volume of products processed. Therefore, we anticipate that allowing hoofs to be processed in their country of origin would have little, if any, adverse impact on domestic processors in terms of lost volume and revenue.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 95 would be amended as follows:

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

1. The authority citation for part 95 would continue to read as follows:

Authority: 21 U.S.C. 111; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 95.11 would be amended as follows:

a. The section heading would be revised as set forth below.

b. The undesignated text of the section would be designated as paragraph (a).

c. A new paragraph (b) would be added to read as set forth below.

As amended, § 95.11 would read as follows:

§ 95.11 Bones, horns, and hoofs for trophies or museums; disinfected hoofs.

(a) * * *

(b) Clean, dry hoofs may be imported without other restrictions if:

(1) The hoofs have been disinfected in the country of origin using one of the following methods:

(i) Dry heat at 180 °F (82.2 °C) for 30 minutes;

(ii) Soaking in boiling water for 20 minutes;

(iii) Soaking in a 0.1 percent chlorine bleach solution for 2 hours;

(iv) Soaking in a 5 percent acetic acid solution for 2 hours; or

(v) Soaking in a 5 percent hydrogen peroxide solution for 2 hours; and

(2) The hoofs are accompanied by a certificate issued by the national government of the country of origin and signed by an official veterinary inspector of that country stating that the hoofs have been disinfected and describing the manner in which the disinfection was accomplished.

Done in Washington, DC, this 16th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16539 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 113

[Docket No. 92–153–1]

Viruses, Serums, Toxins, and Analogous Products; Pasteurella Multocida Vaccine, Avian Isolate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for the Standard Requirement for Pasteurella Multocida Vaccine, Avian Isolate. The effect of the proposed rule would be to revise the standard that a minimum of 16 of 20 vaccinated animals, rather than the current minimum of 14 of 20 vaccinated animals, must survive an exposure to live bacteria in order to demonstrate that the product protects against disease. All such vaccines licensed in recent years have met the proposed efficacy standard. This amendment is necessary to provide greater assurance that a licensed Pasteurella Multocida Vaccine, Avian Isolate, meets the efficacy standard that consumers have come to expect from this product.

DATES: Consideration will be given only to comments received on or before September 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–153–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202–690–2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT:

Dr. David Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the regulations contained in 9 CFR part 113, Standard Requirements are prescribed for the preparation of veterinary biological products. A Standard Requirement consists of specifications, procedures, and test methods which define the standards of purity, safety, potency, and efficacy for a given type of veterinary biological product.

The Standard Requirement for Pasteurella Multocida Vaccine, Avian Isolate, in § 113.70, currently requires that a minimum of 14 of 20 vaccinates must survive exposure to live bacteria for a successful demonstration of efficacy.

Changes and Clarifications

This proposed rule would revise the Standard Requirement in § 113.70 to specify that a minimum of 16 of 20, rather than 14 of 20, vaccinated animals must survive a challenge with live bacteria for a successful demonstration of efficacy. All such vaccines licensed in recent years have met this proposed standard. The Agency has determined that failure to revise the efficacy standard could result in the licensure of vaccines that do not meet the level of efficacy that consumers of these veterinary biological products have come to expect.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if implemented, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed amendment should not have a significant economic impact on manufacturers since the proposed efficacy standard in one that has been readily achieved by all such vaccines licensed in recent years. The change from 14 of 20 to a minimum of 16 of 20 vaccinated animals surviving exposure to live organisms in order to demonstrate satisfactory protection against disease will help ensure that consumers receive a highly efficacious vaccine without adding undue cost to the manufacturer. The proposed efficacy standard assures that fewer animals will come down with disease with a vaccine that can still be produced at reasonable cost to the producer.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted prior to any judicial challenge to the regulations under this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 would be amended to read as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 113.70, paragraph (b)(4), would be revised to read as follows:

§ 113.70 Pasteurella Multocida Vaccine, Avian Isolate.

* * * * *

(b) * * *

(4) Eight or more of the unvaccinated controls must die for the test to be valid. If at least 16 of 20 of the vaccinates do not survive the 14-day postchallenge period, the Master Seed is unsatisfactory at the selected bacterial count.

* * * * *

Done in Washington, DC, this 6th day of July 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16543 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 341, 342, 343, 344, 345, 347, 352, 360, 361, and 375

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Proposed Rulemaking

July 2, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing revisions to its regulations of oil pipelines in order to implement the requirements of Title XVIII of the Energy Policy Act of 1992 (Act of 1992). The proposals would provide a simplified and generally applicable method for regulating oil pipeline rates by use of an index for setting rate ceilings for such rates. In certain circumstances, an oil pipeline would be permitted to charge market-based rates or establish rates using traditional cost of service.

The proposed rule would also revise certain procedural regulations as required by the Act of 1992, abolish the Oil Pipeline Board, and provide for the institution of alternate dispute resolution procedures for oil pipeline rate matters.

The Commission further proposes to change its existing regulations concerning the tariff filing requirements of oil pipelines.

DATES: Comments are due on or before August 12, 1993.

ADDRESSES: An original and 14 copies of written comments on this proposed rule must be filed in Docket No. RM93–11–000. All filings should refer to Docket No. RM93–11–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–0696.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Table of Contents

I. Introduction

The Federal Energy Regulatory Commission ("Commission") proposes to revise its regulation of the rates of oil pipelines, pursuant to the Interstate Commerce Act (ICA), as amended,[1] to fulfill the requirements of Title XVIII, "Oil Pipeline Regulatory Reform," of the Energy Policy Act of 1992 (Act of 1992).[2]

On March 18, 1993, the Commission made available for public comment a proposal by its Staff which encompassed alternatives for regulation of oil pipeline rates in the future. This proposal emphasized three alternative ratemaking methodologies: indexing, market-based rates and cost-of-service ratemaking. Some 24 sets of comments were received on the Staff's proposal, and to the extent deemed necessary are referred to herein. Staff proposed that the Commission adopt as a primary means of regulating oil pipeline rates an indexing methodology based on the Producer Price Index for Finished goods, with a productivity incentive adjustment of minus one (−1) percent. Staff further proposed, as an alternative, a market-based approach if a pipeline could demonstrate, under a new streamlined approach to market delineation, that it lacked market power in markets to which it would apply such a methodology. Finally, Staff proposed that a pipeline be allowed to utilize a cost-of-service methodology as a means of establishing new just and reasonable rates in certain extraordinary cases, such as natural disasters which would require replacement of systems, where the pipeline could clearly show that the indexing methodology would not provide it the opportunity of earning a just and reasonable rate. Staff's other proposals were directed at the procedural reforms called for by the Act of 1992 and other reforms to existing regulations which were designed to "modernize" those regulations.

Based on the Staff proposal and the comments received thereon, the Commission proposes to use, as its primary means of regulating oil pipeline rates, an indexing scheme similar to that proposed by Staff. The Commission intends to establish thereby a "simplified and generally applicable"[3] oil pipeline ratemaking methodology consistent with its statutory mandates under the ICA and the Act of 1992. The Commission's proposal contains the following elements:

1. The Commission proposes to adopt an indexing methodology as its general approach to regulating the level of oil pipeline rates. Indexing is believed to meet the statutory criteria of simplicity and general applicability. The index would establish the maximum ceiling level for any given rate in a given year.

2. Under indexing, rate increase filings would be discretionary with the pipeline.

3. No cost-of-service or any other supporting information would be required to be filed with a rate increase that complied with the index.

4. A pipeline would not be precluded in an individual proceeding from demonstrating either (a) that the rate in question is to be charged in a market in which it lacks significant market power and therefore no price cap is required, or (b) that, due to extraordinary circumstances, application of the index methodology in a particular instance would not allow the pipeline to recoup its costs and therefore a cost-of-service methodology should be utilized.

5. The only challenges to rate change proposals of oil pipelines that the Commission proposes to entertain would be those made through clearly defined protest and complaint procedures which will require specific showings by protestors/complaints of why a particular rate methodology is inappropriate or why particular rate changes should not be allowed.

6. The Commission proposes to revise all rate filing requirements and procedural regulations to reflect these proposals; many of the procedural changes would become effective 30 days after publication of the final rule in the **Federal Register**, while others would take effect 365 days after issuance of a final rule in this proceeding as provided in the Act of 1992.

The Commission emphasizes that it is interested not only in the comments that it will receive on this proposal but also

[1] 49 App. U.S.C. 1 (1988).

[2] 42 U.S.C. 7172 note (1988). References to the Energy Policy Act are to this note, indicating the section number of the statute.

[3] *Id.*, Section 1801.

any proposals that interested parties may wish to put forth to achieve the purpose of establishing a ratemaking scheme that is "simplified and generally applicable," conform to the requirements that the rates of oil pipelines be just and reasonable under the ICA, and otherwise comport with the Act of 1992 and the ICA. In commenting on this proposal, parties are free to refer to comments previously filed, but are encouraged to file new or different comments on this proposal, to propose modifications to this proposal, or to propose other methods of pipeline ratemaking.

II. Reporting Requirements

The Commission estimates the public reporting burden for this collection of information under the proposed rule to average ten hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information will be collected under FERC–550, Oil Pipeline Rates: Tariff Filings. The current annual reporting burden associated with the FERC–500 information collection requirements is 6,500 hours based on an estimated 325 responses from approximately 150 respondents.

The proposed rule will reduce the existing reporting burden associated with FERC–550 by an estimated 1,150 hours annually—an average of ten hours per response based on an estimated 535 responses.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for further reductions of this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425); and to the Office of Information and Regulatory Affairs, Office of Management and Budget (Attention: Desk Officer for Federal Energy Regulatory Commission), Washington, DC 20503.

III. Background

A. Historical Background of Oil Pipeline Rate Regulation

Before describing the specifics of the Commission's proposal, it would be useful to review briefly the history of Federal regulation of oil pipelines.

In 1906 Congress passed the Hepburn Act,[4] which amended the ICA to include among the responsibilities of the Interstate Commerce Commission (ICC) the regulation of the rates and certain other activities of interstate oil pipelines. Specifically, oil pipelines were made common carriers,[5] were required to file for, and charge, rates that were just and reasonable and not unduly preferential,[6] and were required to file certain financial reports and follow certain accounting procedures.[7]

Many constraints commonly associated with utility-type regulation, such as review and approval of construction or acquisition, and abandonment or sale of facilities, were not imposed on oil pipelines. This has been interpreted as reflecting a Congressional intent to allow market forces freer play within the oil pipeline industry than was allowed for other common carrier industries.[8]

From enactment of the Hepburn Act until jurisdiction of oil pipelines was transferred from the ICC to the Commission in 1977, oil pipeline rates were fixed according to a cost-of-service methodology grounded upon use of a valuation rate base—a mixture of original and replacement costs.[9] Valuation ratemaking was heavily criticized in *Farmers Union I*, the first Federal judicial review of an oil pipeline rate case.

During the pendency of the appeal that culminated in *Farmers Union I*, Congress enacted the Department of Energy Organization Act of 1977,[10] which transferred Federal regulatory jurisdiction over oil pipelines from the ICC to the newly created Federal Energy Regulatory Commission. The Commission was required by this act to regulate oil pipelines under the provisions of the ICA as they existed on October 1, 1977. Thus, though the ICA was later revised and recodified,[11] the Commission continues by law to regulate oil pipelines under the ICA as it read at the time jurisdiction was transferred from the ICC to this Commission.

Because of this transfer of regulatory authority, the Commission requested and the court agreed in *Farmers Union I* to remand the rate case to the Commission. The Commission's decision on remand[12] was the first attempt to fashion a ratemaking methodology for oil pipelines that reconciled the modern day economic and competitive realities affecting oil pipelines with the regulatory directive contained in the governing statute. In Opinion No. 154, the Commission adopted a variation of the old ICC methodology, on the basis that the allowed rate levels would be so high they would rarely, if ever, be achieved in practice.[13] Opinion No. 154 was reversed and remanded by the DC Circuit in *Farmers Union II*.[14] The court found the Commission's opinion deficient in several respects, including the reasoning and factual documentation for its almost exclusive reliance on market forces to restrain rates. Summarizing the requirements of the ICA, the court stated:

> Most fundamentally, FERC's statutory mandate under the Interstate Commerce Act requires oil pipeline rates to be set within the "zone of reasonableness"; presumed market forces may not comprise the principal regulatory restraint. Departure from cost-based rates must be made, if at all, only when the non-cost factors are clearly identified and the substitute or supplemental ratemaking methods ensure that the resulting rate levels are justified by those factors.

Id., at p. 1530.

Following *Farmers Union II*, the Commission issued Opinion No. 154–B,[15] establishing a fairly traditional cost-of-service methodology for determining oil pipeline rates. This methodology used a trended original cost rate base, and a rate of return based upon the actual embedded debt cost and equity costs reflecting the pipeline's risks.

Cost-of-service proceedings for oil pipelines were long, complicated and costly and required considerable expenditure of participants' time and resources, including that of the Commission. For example, the *Williams* case took fourteen years to resolve. Even after the Commission's Opinion No. 154–B methodology was adopted, the

[4] 34 Stat. 584 (1906).

[5] 49 App. U.S.C. 1 (1), (4), and (7).

[6] *Id.* at Sections 1(5), 2(1) and 6(1) and (3).

[7] *Id., at Sections 20(1), (2), (4) and (5).*

[8] See *Farmers Union Central Exchange* v. *FERC*, 584 F.2d 408, 413 (D. C. Cir., 1978), cert. denied 439 U.S. 995 (1978) ("Farmers Union I"). "* * * [We] may infer a congressional intent to allow a freer play of competitive forces among oil pipeline companies than in other common carrier industries and, as such, we should be especially loath uncritically to import public utilities notions into this area without taking note of the degree of regulation and of the nature of the regulated business."

[9] The ICC also established generic rates of return for oil pipelines.

[10] 42 U.S.C. 7101.

[11] See Revised Interstate Commerce Act of 1978, 49 U.S.C. 1.

[12] Opinion No. 154, 21 FERC ¶ 61,260 (1982), *reh'g denied*, 22 FERC ¶ 61,086 (1983).

[13] See id., at p. 61,649: "Competition both actual and potential is a far more potent or price-constraining force in oil pipelining than it is in the other areas in which we work [fn. omitted]."

[14] *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486 (D. C. Cir., 1984), *cert. denied*, 469 U.S. 1034 (1984).

[15] Williams Pipe Line Co., 31 FERC ¶ 61,377 (1985) (the *Williams* case).

next proceeding attempting to apply this methodology itself took four years to conclude.[16]

More recently, the Commission has authorized an experimental, market-based rate program for Buckeye Pipe Line Company.[17] This method uses rate caps to constrain rates in markets where the pipeline lacks significant market power. It uses a price change index, derived from rate changes in competitive markets, to limit rate increases in markets where the pipeline has significant market power. Under this approach, rate changes within the caps or within the price change index, as applicable, are allowed to take effect (after the statutory notice period) without investigation or suspension. Since *Buckeye,* the Commission has permitted pipelines the option of pursuing a market-based approach to ratemaking as an alternative to the cost-based methodology.

A critical predicate to the utilization of a market oriented rate regulation scheme is the ability to identify and measure the competitiveness of relevant markets. The first step in this process is to define the scope of the market. In *Buckeye,* the Commission held that markets would be delineated by product and geography, and determined that this would be done on a case-by-case basis.[18] To determine whether the pipeline exercises market power in a given market, the Commission stated that it would analyze a number of considerations, including market share, market concentration, excess capacity, transportation alternatives, and potential entry. The Commission rejected the notion that it should employ a single mechanism, such as the Herfindahl-Hirschman Index, to make a threshold determination of market power beyond which no further analysis would be undertaken. Finally, the Commission held that the pipeline carried the burden to demonstrate it lacked significant market power in each market in which it sought "light-handed" rate regulation.

Buckeye was also an experimental effort to see if the Commission's ratemaking methodology could be simplified. It was determined that the market-based approach was useful in those markets where the pipeline did not possess market power. However, using an analysis similar to that used in anti-trust cases to determine whether the pipeline possessed market power is itself a costly time and resource consuming effort. Moreover, the market-based methodology is not appropriated where the pipeline possesses market power.

B. Energy Policy Act of 1992—Specific Requirements

Section 1803 of the Act of 1992, deems certain existing rates to be just and reasonable within the meaning of section 1(5) of the ICA. These are rates that were in effect for the 365 day period ending on the date of enactment of the Act of 1992, or that were in effect on the 365th day preceding enactment, and which have not been subject to a protest, a compliant or an investigation during this 365-day period.[19]

Complaints under section 13 of the ICA may be filed against these "grandfathered" rates only under one of two circumstances: first, a substantial change has occurred, since enactment, in the economic circumstances or in the nature of the services which were the basis for the rate; or, second, the complainant was under a contractual bar against filing a compliant, and the bar was in effect prior to January 1, 1991 and on the date of enactment. Further, the complainant must file its complaint within 30 days of the expiration of the contractual bar.[20] These grandfathering provisions do not prohibit any "aggrieved person" from filing a complaint alleging that a pipeline tariff provision is unduly discriminatory or unduly preferential.[21]

Sections 1801 and 1802 of the Act of 1992 require the Commission to promulgate regulations establishing a "simplified and generally applicable ratemaking methodology * * * in accordance with section 1(5) of the Interstate Commerce Act" for oil pipelines, and streamlining Commission procedures relating to oil pipeline rates "in order to avoid unnecessary costs and delays." A final rule on ratemaking methodology must be issued not later than one year after the date of enactment, or by October 24, 1993 (and the rule may not take effect before the 365th day after its issuance). A final rule on rate procedures must be issued within eighteen months of the date of enactment, or by April 24, 1994.

The Act of 1992 directs the Commission to consider the following issues in streamlining its rate procedures:[22]

Type of information required to be filed with a tariff;
Availability to the public of the Commission's or the staff's analysis of the tariff filing;
Qualifications for standing of parties who would file protests or complaints;
The level of specificity required for protests and complaints;
Guidelines for Commission action on the portion of the tariff subject to a protest or complaint;
An opportunity for the pipeline to respond to an initial protest or complaint; and
Identification of circumstances under which Commission staff may initiate an investigation.

Further, the Commission is required by the Act of 1992 to establish, "to the maximum extent practicable," appropriate alternative dispute resolution procedures for use early in pipeline rate proceedings. These procedures must include required negotiations and voluntary arbitration. The Commission was directed to consider rates proposed by the parties through these procedures upon an expedited basis.[23]

Finally, Congress explicitly excluded the Trans-Alaska Pipeline, or any pipeline delivering oil directly or indirectly to it, from the provisions of the oil pipeline regulatory reform title of the act of 1992.[24]

C. Energy Policy Act of 1992—Congressional Intent

Title XVIII of the Act of 1992 requires the Commission to establish a simplified and generally applicable ratemaking methodology. Congress has also mandated a streamlining of the Commission's rate filing procedures to avoid unnecessary regulatory costs and delays. The lawfulness of certain existing rates has been grandfathered. The just and reasonable standard for rates has been explicitly retained.[25]

The Commission concludes that oil pipeline rates have not been deregulated and that the Commission must continue to ensure that oil pipeline rates are just and reasonable. Moreover, the new act requires regulation of oil pipeline rates to be accomplished in a manner that brings a degree of simplicity, expeditiousness, and economy to the process.

D. One Rulemaking Rather Than Two

The Commission is required under sections 1801 and 1802 of the Act of 1992 to promulgate certain substantive

[16] See ARCO Pipe Line Company, 52 FERC ¶ 61,055 (1990), *order on reh'g,* 53 FERC ¶ 61, 398 (1990).

[17] Opinion No. 360, 53 FERC ¶ 61,473 (1990).

[18] Buckeye Pipe Line Co., L.P., Opinion No. 360-A, 55 FERC ¶ 61,084 at p. 61,260 (1991).

[19] Section 1803(a).

[20] Section 1803(b).

[21] Section 1803(c).

[22] Section 1802(b).

[23] Section 1802(e).

[24] Section 1804(2)(B).

[25] Title XVIII follows years of consideration by the Congress of more sweeping deregulatory legislation that was the basis for the 1986 Report on Oil Pipeline Deregulation of the Department of Justice. See Oil Pipeline Deregulation, Report of the U.S. Department of Justice (May 1986).

and procedural rules respecting oil pipeline rate regulation. These sections have different timing requirements. Under section 1801 the Commission must issue a final rule on ratemaking methodology no later than one year after the date of enactment, but it must not take effect until 365th day after the date of issuance of that rule. Under section 1802 the Commission must issue a final rule on procedural reform no later than 18 months after enactment. There is no restriction on when the final rule on procedural reform may take effect. The Commission proposes to issue a single rule to cover the requirements of both sections, with the same effective date for both the ratemaking and filing procedures—i.e., one year after issuance of a final rule, except for those procedural changes discussed below which are proposed to become effective 30 days after publication of a final rule in the **Federal Register**. This is because the two rules in question are clearly and closely related. The two rules must and should work together, and they are more likely to do so if promulgated at the same time and in the same proceeding.

IV. Proposed Ratemaking Methodologies

A. Introduction

Section 1801(a) of Title XVIII reads as follows:

(a) ESTABLISHMENT—Not later than 1 year after the date of enactment of this Act, the Federal Energy Regulatory Commission shall issue a final rule which establishes a simplified and generally applicable ratemaking methodology for oil pipelines in accordance with section 1(5) of part I of the Interstate Commerce Act.

It is apparent from section 1801(a) that it is the intent of the Congress that oil pipeline ratemaking must be done more simply and quickly than it has been done up to now. By referencing section 1(5) of the ICA, Congress reaffirmed the Commission's obligation under the ICA to ensure rates to be demonstrably just and reasonable. To accomplish this objective requires a rate-changing methodology that reduces the necessity and likelihood of prolonged litigation, that can be applied by pipelines and reviewed by shippers and by the Commission expeditiously, and that is usable without significant variation or modifications by most, if not all, pipelines.

The Commission believes that the approach of applying an industry-wide cap on rate changes derived by an appropriate index would achieve the above-described policy objectives, as well as meet the statutory criteria of simplicity and general applicability. Importantly, Congress declared most existing rates to be just and reasonable, thus providing a foundation of just and reasonable rates from which to index. In addition, a rate cap approach would provide efficiency incentives for the industry, while at the same time producing economic benefits for the public.

Thus, the Commission proposes an index for determining the maximum rate the pipeline could charge. The pipeline will be free at any time to set a rate below this maximum ceiling rate. This indexing methodology would constitute the Commission's generally applicable methodology for regulating changes in rates in the oil pipeline industry.

The Commission, however, recognizes that circumstances vary by pipeline and by market and, further, that unforeseen and uncontrollable events substantially affecting the cost of providing service may arise from time to time. Regulation should take into account particularly circumstances and provide for a deviation from a generally applicable rate-setting policy when necessary or appropriate to comply with the statutory standard of just and reasonable rates. The Commission proposes, therefore, to allow pipelines to demonstrate in individual proceedings that rate levels should be established other than by indexing. First, pipelines will be allowed the opportunity to file for market rates for markets in which the pipeline can demonstrate that it lacks significant market power. Second, for recoupment of extraordinary costs, as discussed *supra*, a pipeline can seek to set rates using a cost-of-service methodology. In either event, a pipeline seeking approval to establish its rates other than by indexing would be required to justify its departure from indexing.

With respect to the market rates, a pipeline would still have the option of attempting to show that it lacks significant market power in some, or all, of the markets in which it provides service, and thus it should be permitted to establish rates based on its lack of market power in such markets. The pipeline would be permitted to show on a case-specific basis that it lacks significant market power in a proceeding similar to that utilized in *Buckeye*. Moreover, pipelines would be encouraged to submit market-rate filings that propose streamlined procedures to identify their competitive markets and implement market-based ratemaking. In other words, the Commission does not necessarily view *Buckeye* as the last word on how such proceedings should be conducted. Improvements and refinements are to be expected.[26] Over the years, it is hoped a body of precedent would be developed that would enable the Commission to utilize light-handed regulation where appropriate and justifiable without subjecting the concerned parties to protracted and expensive adjudicatory proceedings.

At this time, the Commission is not proposing to promulgate a rule containing procedures to streamline its consideration of these competitive-market showings. A simplified market-based methodology, even if it could be done for oil pipeline ratemaking under the Interstate Commerce Act, would not comply with the statutory directive of establishing a "generally applicable" methodology, because it would not apply to rates charged in markets where there is insufficient competitive pressure to protect shippers from rates that are unjust and unreasonable.

Establishment of a simplified and streamlined methodology for market-based ratemaking for oil pipelines would involve resolution of several complex antitrust issues[27] which do not appear to lend themselves to generic resolution.

Any attempt to establish threshold standards for determining pipeline market-power, in order to shortcut the decisionmaking process in competitive-market inquiries, would necessitate, under due process requirements, allowing shippers to rebut the evidentiary implications flowing from such thresholds. Moreover, to the extent the threshold standards were crafted to be broadly applicable (i.e., apply to more than just clearly competitive markets), the rebuttal presumption mechanism would be more frequently invoked by shippers, thus leading to the protracted litigation which Congress seeks to avoid.

Nor does it appear that the solution to this problem is to be found in establishing "conclusive" presumptions to identify competitive markets. Conclusive presumptions would have to be crafted narrowly so as to identify only the most clearly competitive markets. The procedure, then, would be successful in expediting the

[26] See 55 FERC at 61,261, where the Commission recognized the experimental nature of Buckeye's proposal and that it was not intended to be generally applicable to other oil pipelines. The Commission indicated that it would be receptive to alternative market-based ratemaking methodologies which might be proposed by other pipelines that are tailored more closely to their circumstances.

[27] These include issues of market delineation, market concentration thresholds, market share thresholds, water shipment competition, and shipper buying power.

competitive-market inquiry only rarely—the majority of cases would entail full hearings. This being so, it is doubtful that a conclusive-presumption procedure would make more than a minimal contribution toward accomplishing the statutory goal of streamlining and simplifying the Commission's decisionmaking on oil pipeline ratemaking.

For these reasons, the rulemaking approach may hold few, if any, advantages over the case-by-case approach in developing a market-based ratemaking methodology that meets the requirements of the ICA.

In any event, the index methodology gives pipelines considerable flexibility to change rates, and thus may accommodate a pipeline's need in a competitive market to respond to competitive pressures through rate changes. This is because the methodology only establishes a ceiling, and pipelines would be free to charge any rate not exceeding the ceiling.[28]

With respect to the cost-of-service methodology, a pipeline would be required to show that, due to extraordinary circumstances, application of the index in a particular instance would fail to result in a just and reasonable rate within the meaning of the Interstate Commerce Act. The cost-of-service alternative is proposed only as a temporary departure from the indexing methodology; subsequent changes to a rate established under the cost-of-service alternative would be governed by the index.

The extent to which a pipeline would be allowed to switch from one methodology to another for the same rate is largely answered by the proposed standards to determine which of the two alternatives to the generally applicable indexing methodology a pipeline will be permitted to employ. As stated above, allowing market rates will require a finding that the market in question is one in which the pipeline is unable to exercise significant market power, and the cost-of-service methodology will require a finding that the applicable index, due to extraordinary circumstances, will not provide the pipeline a just and reasonable rate. A pipeline would be permitted to depart from indexing and utilize one of these two alternatives only when it can make these requisite showings. Further, it follows as a logical and practical reality that a pipeline which is charging market rates would not voluntarily seek to switch to one of the other methodologies, since market rates would provide it with at least the same degree of pricing flexibility envisioned by the other two methods. Finally, the Commission proposes to employ the cost-of-service methodology only for those specific instances when the pipeline can show that, because of extraordinary circumstances, the index will not permit a just and reasonable rate within the meaning of the Interstate Commerce Act. As stated above, subsequent changes to a rate so established would be governed by the index or by establishing entitlement to market rates.

A final issue concerning implementation of the indexing methodology pertains to the establishment of an initial rate for new service either by an existing pipeline or a new pipeline. The Commission proposes to allow a rate agreed to between the pipeline and shippers to serve as the filed initial base rate for such new service. The Commission thus adopts the suggestion of the National Council of Farmer Cooperatives to use as the base rate the initial negotiated rate between the initial shipper to that market and the pipeline.[29]

B. Indexing System

1. Purposes and Benefits

An indexing scheme has a number of benefits. First, it would permit pipelines to adjust rates to just and reasonable levels for inflation-driven cost changes without the need of strict regulatory review of the pipeline's individual cost of service, thus saving regulatory expenses. Second, an indexing scheme is a form of incentive regulation. As such, it gives greater emphasis to productive efficiency in noncompetitive markets than does traditional cost-of-service regulation.[30] Third, indexing provides shippers protection from rate increases greater than the rate of inflation.

2. Choosing an Index

a. General inflation indices. There are a number of ways to compute a rate index. One is to use a general inflation index which measures overall inflation in the economy. Application of a general inflation index to initial base rates would ensure that rates measured in real, or non-inflated, terms do not increase over time. The most widely-recognized general inflation indices are the Gross Domestic Product (GDP) Implicit Price Deflator, the Consumer Price Index (CPI) and the Producer Price Index (PPI) for Finished Goods.[31] In *Buckeye*, the Commission permitted to use of the Gross National Product (GNP) deflator (since replaced by the GDP deflator) to determine Buckeye's maximum rates in markets where it lacks significant market power.[32]

The Commission has indicated that linking rates to a general price index has both the benefit and burden of simplicity.[33] A disadvantage of a general inflation index is that it will not precisely track cost changes in the oil pipeline industry.[34] To the extent that general price indices have little direct connection to the oil pipeline industry, they may miss important changes in a pipeline's costs, and rates could become unreasonably high or low.[35] On the other hand, general inflation indices would not be subject to concern over potential manipulation, and their use would not require Commission resources in compiling an industry-based index.

b. Oil pipeline industry indices. Instead of relying upon a general inflation index, an index scheme could employ an index of industry costs or rates. An industry-based index would better reflect cost trends in the oil pipeline industry. Since 1986, the Bureau of Labor Statistics (BLS) has reported component Producer Price Indices (PPI) for oil pipeline rates.[36]

[28] The only instance in which the indexing methodology might fail to meet the needs of a pipeline in competitive markets is where the market rate would be above the ceiling imposed by the index. In such a case, however, the pipeline would be permitted to make a filing with the Commission and propose that it be accorded market-based treatment of its rates.

[29] Response of the National Council of Farmer Cooperatives to the Staff Proposal for Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Docket No. RM93-11-000, at p. 5 (April 30, 1993).

[30] Indexing fosters efficiency by severing the linkage under traditional cost-of-service ratemaking between a pipeline's rate changes and changes in its current operating and investment costs. This provides the pipeline with the incentive to cut costs aggressively, since it is assured that it will retain the savings it generates.

[31] GDP Implicit Price Deflator: U.S. Dept. of Commerce, Economics and Statistical Administration, Bureau of Economic Analysis, Survey of Current Business. CPI: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review. PPI (Finished Goods): U.S. Dept. of Labor, Bureau of Labor Statistics, Producer Price Indexes.

[32] 53 FERC ¶ 61,473 at pp. 62,675, 62,681 (1990).

[33] See, e.g., Policy Statement on Incentive Ratemaking, Incentive Ratemaking for Natural Gas Pipelines, Oil Pipelines and Electric Utilities, 61 FERC ¶ 61,168 at p. 61,591 (1992).

[34] Buckeye Pipeline Company, LP, 53 FERC ¶ 61,473 at p. 62,681 (1990) (Opinion No. 366).

[35] Policy Statement on Incentive Ratemaking, 61 FERC ¶ 61,168 at p. 61,591 (1992).

[36] U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Indexes, Pipelines, Except Natural Gas. BLS reports price indices for all oil pipelines, crude petroleum pipelines and refined petroleum pipelines. For crude petroleum pipelines, BLS separates the Trans-Alaska pipelines from other crude petroleum pipelines. This is significant since the Trans-Alaska Pipeline is excluded from the definition of oil pipelines under the Act of 1992 and for purposes of this proposed rulemaking.

The PPI series for oil pipeline rates has three advantages. First, it tracks industry conditions more closely than does a general inflation index. Second, it does not require Commission resources in compiling a price index for the oil pipeline industry. Third, it is largely independent of the behavior of any individual regulated pipeline.[37]

A serious flaw in the use of the published PPI series for oil pipeline rates is that it is comprised of indices of pipeline rates, not costs. The use of a rate index could create a "circularity" problem if most oil pipeline rates were actually constrained by the rate index: The rate index would be determined by rate increases that are in turn determined by the rate index. While a price cap methodology based on the oil pipeline rate index might work if only a small fraction of oil pipeline rates were constrained by the index, the rate index might still develop a serious downward bias.[38]

The Commission could use PPI price data for oil pipeline inputs to construct a cost index for oil pipelines by creating a weighted average of the prices of oil pipeline inputs such as steel pipe, pumps, power, and labor. In theory, the appropriate weights would depend on the "production function" for oil pipelines: The relationship between an oil pipeline's inputs and its volumetric throughput. A disadvantage of a cost index would be the commitment of resources necessary to determine and compile such a cost index.

In *Buckeye*, the Commission adopted another type of index for capping rates in non-competitive markets. The Commission permitted the use of the weighted average of Buckeye's actual rates in those markets where it lacked significant market power to determine the price cap for rates in non-competitive markets. The Commission chose the weighted average method over Buckeye's original price-cap proposal to alleviate concern over the use of an endogenous index.[39] The Commission recognized that there could still be a risk that a pipeline would raise its rates in competitive markets in order to justify higher rates in non-competitive markets.[40]

c. Conclusion. The Commission proposes to use, in an indexing methodology for oil pipelines, the GDP Implicit Price Deflator. The GDP deflator is the best indicator of inflation in the overall economy.[41] Since it covers the broadest range of goods and services, the GDP deflator is the least volatile of general inflation indices. The GDP deflator is totally independent of the behavior of any pipeline. The GDP deflator will free the Commission from the difficulties associated with the construction of an oil pipeline industry cost index. Finally, the Commission believes that no other general inflation index is better than the GDP deflator in predicting future costs in the oil pipeline industry.[42] In *Buckeye*, the Commission recognized the predecessor of the GDP deflator to be "a widely used and well-understood broad-based index"[43] and noted that it is a reasonable index for price changes in a competitive market, especially for a short time period.[44]

The Commission is persuaded that the same inflationary forces which the indexed rate would be designed to reflect operate on non-competitive markets as well as on competitive markets. In view of the Congressional enactment of the Act of 1992 and its mandates for change as described *supra*, the Commission believes it has the authority to prescribe indexing for transportation service to those markets where a pipeline may have significant market power.

3. Procedures Related to the Indexing Methodology

a. Filing the rates. Under the Commission's proposal, the index would be applied to a rate which would be a just and reasonable rate established by the provisions of section 1803 of Title XVIII of the Act of 1992. The new rates derived from using the index also would be considered just and reasonable. For new service—either by an existing pipeline or a new pipeline—a negotiated rate may serve as an initial rate upon which to apply the index.

The Commission proposes that, for those rates that are in effect but under investigation and thus subject to refund, or that have not been determined to be just and reasonable, indexing would still be applicable. The new rates derived from use of the index would not be deemed automatically just and reasonable and would be made effective subject to refund.

Under the Commission's proposal, each pipeline will establish an annual ceiling level for each of its rates in that year. The annual ceiling level shall equal the ceiling level for the previous year times the current value of the index divided by the value of the index in the previous year.

At any time during the year, the pipeline may then file and charge a rate that is less than or equal to the annual ceiling level.[45] Should a pipeline file a rate below the annual ceiling level, it could file at any time during the year to increase its rates up to the ceiling. There would, of course, be no entitlement to recoup revenues forgone by not setting rates at ceiling levels in the current or previous years. If deflationary pressures push the ceiling level below the filed rate in any year, each pipeline would be required to reduce its rates so that the filed rates do not exceed the ceiling. The Commission proposes this requirement to ensure that pipeline rates will not exceed general cost levels in markets where the pipeline has significant market power.

When a pipeline files changed rates in accordance with the index, it would provide the following information:

* A cover letter describing the basis for the proposed change (i.e., that it is to change rates according to the index);

[37] The Commission regulates approximately 150 oil pipeline companies. In terms of trunkline barrel-miles, the ten largest oil pipeline companies in 1991 (together with their share) were as follows: Colonial Pipeline Co.—19.7%, Lakehead Pipe Line Co. Inc.—9.7%, BP Pipeline (Alaska) Inc.—7.7%, Exxon Pipeline Co.—4.5%, ARCO Transportation Alaska Inc.—3.4%, Plantation Pipe Line Co.—3.3%, Amoco Pipeline Co.—3.1%, Shell Pipe Line Corp.—3.1%, Ashland Pipe Line Co.—2.6%, and Explorer Pipeline Co.—2.5%. FERC Form 6, as compiled and reported in the Oil & Gas Journal, at pp. 43, 56–59 (November 23, 1992). BP Pipeline (Alaska), Exxon Pipeline, and ARCO Transportation Alaska have undivided interests in the Trans-Alaska Pipeline System, which is excluded from the definition of oil pipelines in the Act of 1992.

[38] The oil pipeline rate index could become biased downward in that it would reflect rate decreases resulting from downward shifts in demand for some pipelines, while rate increases resulting from upward shifts in demand for other pipelines could be constrained by the index.

[39] 53 FERC ¶61,473 at p. 62,683 (1990). The Commission has indicated elsewhere that actions taken by a pipeline should not change the value of the index used to adjust its rates. See Policy Statement on Incentive Regulation, 61 FERC ¶61,168 at p. 61,591 (1992).

[40] 53 FERC ¶61,473 at pp. 62,683–4 and 62,687, n. 5. While the Commission recognized the concern about the use of an endogenous index, it noted that Buckeye could not use an index based upon competitors' rates since it may not have current access to and accurate information about those rates.

[41] The Commission Staff proposed the use of the Producer Price Index for Finished Goods (PPI–FG) in an indexing methodology for oil pipeline ratemaking. The Commission believes the GDP Implicit Price Deflator would be a better measure of inflation in the overall economy, since the PPI–FG reflects only a fraction of the economy: those commodities that will not undergo further processing and are ready for sale to the final demand user.

[42] The Commission Staff also proposed that the inflation rate used in the index be reduced each year by one percent, as an offset for productivity. The Commission sees little justification for the productivity offset, and thus proposes to use the GDP Implicit Price Deflator without any adjustments.

[43] 53 FERC ¶61,473 at p. 62,681 (1990).

[44] 53 FERC ¶61,473 at p. 62,681 (1990).

[45] The Commission will not require a rate to equal its annual ceiling level because, in some cases, the rate may be constrained by competitive market forces.

* The revised tariff;
* Supporting information, including a compilation showing the revised rate compared with the previous rate for the same movement of product, and the ceiling rate, and including the calculation of the annual ceiling rate done in accordance with proposed § 342.3(c); and
* A certificate of service.

The Commission proposes to prohibit pipelines from filing rates that exceed the annual ceiling level. If the pipeline believes that in a particular instance the index would not yield a just and reasonable rate, it would be required to justify the need to utilize either the cost-of-service methodology described below[46] or to charge market-based rates.

b. Challenges to the rates. Under the Commission's proposed indexing methodology, just and reasonable pipeline rates that are changed within the applicable ceilings established by the index are presumed to be just and reasonable. Thus, the Commission does not propose to entertain, on the merits, any protest or complaint that makes a generalized allegation that the rates are unjust and unreasonable, or that they do not reflect the actual costs of rendering the service in question.

The statutory and proposed regulatory policies of streamlining and expediting oil pipeline ratemaking make it necessary and appropriate to circumscribe cost-of-service challenges to existing and proposed rates. Most of the existing rates on file with the Commission have been statutorily deemed, in the Act of 1992, to be just and reasonable. Certain other existing rates are just and reasonable by virtue of previous Commission orders. Changes of just and reasonable rates proposed by a pipeline that comply with the index are presumed, under the methodology, to reflect costs and result in rates that are just and reasonable.

Thus, the proposed regulations contain language to limit the consideration of cost-of-service challenges to rates by shippers. In the Act of 1992, Congress has supplied a standard defining the circumstances under which an existing rate deemed just and reasonable by that statute may be challenged in a complaint: when a substantial change has occurred, since the enactment date of the Act of 1992, in either the economic circumstances or in the nature of the services provided, which were a basis for the rate.[47]

The proposed regulation adopts this same standard for protests filed against index-based rate changes. The pipeline would be required to show in its rate filing that the proposed new rate level complies with the applicable ceiling mandated by the index. This would constitute a prima facie showing that the proposed rate level is just and reasonable. A protest that generally alleged that the proposed rate does not reflect the pipeline's cost-of-service would be dismissed. To obtain an investigation, the protestant would be required to allege in its protest, and present evidence through sworn affidavit to prove, that there has been a substantial change, since the rate was last changed, in either the economic circumstances or in the nature of the services provided that were a basis for the rate, and that such change renders the application of the index unjust and unreasonable.

When a complaint is brought against an existing rate that was itself the product of the application of the index to a prior rate, the same standard would obtain. That is, the complainant would be required to show that there has been a substantial change, since the rate was established, in either the economic circumstances or in the nature of the services provided that were a basis for the rate, and that such change renders the application of the index unjust and unreasonable.

Thus, the proposed regulations would limit rate challenges by shippers under the indexing system to those circumstances which Congress determined would be appropriate for challenges to rates legislatively deemed just and reasonable under the Act of 1992. This result strikes a fair and reasonable balance between the interests of shippers and the policy goal of streamlining and expediting the ratemaking process.

An exception to these limitations against challenges is provided in the proposed regulations for those rates in existence on the effective date of the new regulations which have neither been deemed just and reasonable by the Act of 1992, nor determined to be just and reasonable by a Commission order. Such rates would be subject to complaints under section 13(1) of the ICA as traditionally interpreted. However, when such a rate is proposed to be changed under, and in compliance with, the indexing methodology, a protest against the change would be subject to the Act of 1992 standard set forth above.

Finally, the restrictions described in this part of the proposed regulations apply only to cost-of-service challenges to rates, and would not apply to challenges alleging other specific violations of the ICA or the Commission's regulations, such as undue discrimination or preference; nor would they apply to non-rate matters.

C. Cost-of-Service Methodology

Under the Commission's proposal, an alternative to the generally applicable indexing methodology is a cost-of-service presentation constructed in accordance with Opinion No. 154–B and subsequent related opinions.[48] This is intended to be a rarely used exception to the indexing methodology; this alternative is to be used only when there are extraordinary circumstances under which the application of the index would fail to result in a just and reasonable rate within the meaning of the Interstate Commerce Act. By "extraordinary circumstances" the Commission means substantial, unforeseen, and uncontrollable increases in cost. The cost-of-service alternative is proposed to be only a temporary departure from the indexing methodology; subsequent changes to a rate established under the cost-of-service alternative would be governed by the index.

The Commission's rationale for proposing that the extraordinary-circumstances standard would be interpreted strictly is based upon two primary considerations. First, extraordinary circumstances must not be used as a means to compensate for inefficiency and thereby undercut the incentives intended to be provided by the generally applicable indexing policy. Second, extraordinary circumstances should not be invoked for expenses that are generally expected to be recovered under the indexing method. In particularly, extraordinary circumstances do not include increases in fuel and power costs, increases in insurance costs, and industry-wide expenses mandated by environmental and safety regulations. Such expenses are generally expected to be recovered by the general inflation index. Furthermore, extraordinary circumstances do not include the cost of pipe and other capital equipment incurred during normal replacement or throughput expansion. Revenues for such investments are generally expected to be recovered by the application of indexing to the entire base rate, not merely to some operating and maintenance component of such rate.

[46] Subsequent changes to a rate established by the cost-of-service methodology would be allowed to be made pursuant to the index.

[47] Section 1803(b).

[48] See Williams Pipe Line Company, 31 FERC ¶ 61,377 (1985) (Opinion No. 154–B); Opinion No. 154–C, 33 FERC ¶ 61,327 (1985). See also ARCO Pipe Line Company, 52 FERC ¶ 61,055 (1990) (Opinion No. 351); Opinion No. 351–A, 54 FERC ¶ 61,398 (1990).

The Opinion No. 154–B cost-of-service methodology employs traditional cost-of-service rate making procedures based on a trended original cost (TOC) rate base. The Opinion No. 154–B methodology was adopted to replace the valuation methodology previously used by the ICC. To provide for minimum disruption to the industry in the initial switch from the valuation methodology to the Opinion No. 154–B methodology, the Commission allowed pipelines in existence prior to January 1, 1984 to adopt a starting or transition rate base based upon the previously used valuation rate base.[49]

Appendix A is an example of the basic information the Commission would require from pipelines filing for rate changes based on the Opinion No. 154–B methodology. At the time a pipeline files for rates based on the Opinion No. 154–B methodology, information must be provided for each year since 1983 (to the extent it has not been previously filed) up to the current year. This information is necessary for the Commission Staff, as well as other interested parties, to ascertain the basis for the proposed rates.

V. Procedures for Streamlining Commission Action on Rates

Section 1802 of the Act of 1992 requires the Commission to consider certain specific procedural issues in a rule to streamline its procedures relating to oil pipeline rates. Accordingly, certain new procedures are proposed for the treatment of protests and complaints that will expedite consideration of rates by reducing the frequency and the scope of adjudicatory proceedings. These new procedures are discussed in section A below.

The new procedures will be incorporated into the Commission's existing practices and procedures for administering oil pipeline tariffs and resolving challenges to those tariffs. The existing practices are codified in part 385 ("Rules of Practice and Procedure") of the Commission's regulations, and govern the filing of tariffs, protests, and complaints; service upon parties; time periods for responding to pleadings; and other details of uncontested and contested proceedings.

The Commission also proposes substantial revisions to the existing regulations on tariffs, which were inherited from the ICC, in order to eliminate archaic and unnecessary language.

A. New Procedures

Congress clearly intends for the Commission to expedite its handling of oil pipeline rate filings. Section 1802(b) of the Act of 1992 specifies certain matters for promulgation of new regulations by the Commission in order to define more sharply, and narrow, the issues when administrative adjudication is necessary. Accordingly, and in compliance with the explicit direction of section 1802(a) to consider certain specific procedural reforms, the Commission proposes to adopt new regulations addressing those reforms as explained below.

1. Identification of Information to Accompany a Tariff Filing

The Commission proposes to include in its new regulations particular guidance on the kinds of information pipelines must file with proposed rate changes, depending upon the methodology the pipeline utilizes for establishing its rates. This proposed guidance was explained above in the discussion of the procedures for implementing the rate methodologies.

2. Availability to the Public of Staff Analysis of Tariff Filings

No new regulation on public access to staff analysis of tariff filings is proposed. First, in those instances when no protest or complaint is lodged against a tariff there would seem to be no need for making staff analysis available. Second, in those instances when a protest or complaint is lodged but is dismissed by the Commission based upon the pipeline's response and without further investigation, the reasons for such dismissal would be set forth in the dismissal order. The Commission believes this would be sufficient to meet any public need or right to know of the basis for the Commission action. Finally, when an oil pipeline tariff is subject to investigatory proceedings or has been set for hearing, the usual rules of discovery found in § 385.401, *et seq.*, of the Commission's regulations would apply. The Commission believes these rules are adequate to ensure that interested parties have access to the information they require to make their respective cases before the Commission.

3. Standing of Parties to File Protests

Standing to file a protest under section 15(7) of the ICA is proposed to be limited to parties that possess a direct economic stake in the pipeline rate or practice in question. This means that the actual or potential customers of the pipeline would have standing to file protests. The proposed regulations would require that such parties submit a verified statement showing that the routes they have shipped over, have attempted to ship over, or plan to ship over are covered by the rates or practices they challenge.

Whether customers of customers of pipelines should be deemed to have an interest in pipeline rates or practices sufficient to confer standing is an open question. Pipeline charges for transportation constitute only a small percentage of the downstream price of petroleum products.[50] It would seem that direct customers of pipelines have a much larger stake in pipeline rates and practices. Should the Commission therefore rely solely upon shippers to bring claims alleging potential violations of the ICA? A factor that weighs against limiting standing to shippers is that many of them are affiliated with the pipelines they utilize for transportation of their products and thus may have reasons not to bring potentially meritorious claims. The Commission would therefore propose to confer standing upon a customer of a pipeline customer if it can demonstrate that its economic stake in the issue sought to be raised is "substantial" and no other party can adequately represent it.

The Commission would confer standing upon competitors of pipelines only for the limited purpose of alleging that a pipeline is engaging in unfair or anti-competitive practices that would violate the ICA. Thus, a competitor, without more, would not have standing to protest rate filings. Although the Commission is not charged with the responsibility, or the authority, to enforce the antitrust laws, its obligation under the ICA to ensure that pipeline rates and practices are just and reasonable gives it an interest in the competitive behavior of pipelines.[51] This interest would be particularly compelling in those markets where the pipeline is permitted to establish rates without prior regulatory restraints because the Commission has determined that the pipeline does not possess market power. A pipeline which engaged in anti-competitive practices in such circumstances would be undercutting the justification for market rate treatment. The Commission would

[49] Pipelines which were not in existence prior to December 31, 1983, or which were not previously relying on the valuation rate base to determine rate levels should also use the TOC method described above. These pipelines will not employ the starting or transition rate base. Rather, a new pipeline would simply start with its original cost.

[50] The average pipeline tariff rate in 1991 was 59.1 cents per barrel, and in 1990, it was 62.8 cents per barrel. FERC Form 6. By contrast, the current price of a barrel of gasoline is about 40 dollars.

[51] See *American Trucking Assn., Inc.* v. *United States*, 642 F.2d 916, 922 (5th Cir. 1981) (the ICA expresses a "general policy in favor of competition.")

obviously have a strong interest in having such activity brought to its attention. Thus, the proposed new regulations would grant standing to shippers, potential shippers or competitors of pipelines who allege that the pipeline is engaging in anti-competitive practices, including but not limited to allegations of predatory pricing.

4. Level of Specificity for Protests and Complaints

This issue has been addressed above, in the discussion of the kinds of claims the Commission would consider on the merits under the alternative rate methodologies.

5. Guidelines for Commission Action on the Portion of the Tariff or Rate Filing Subject to Protest or Complaint

If a rate change is filed and no protest from third parties is received, the Commission proposes, with one exception, that such rates take effect without suspension. The exception is a filing which proposes to change a rate that is itself subject to a refund obligation—such a filing may be suspended by the Commission in the absence of a protest.[52]

The Commission proposes that rates which are protested will be subject to suspension. Suspension will normally be of the minimum time allowed by law. Should the Commission decide, after review, that the protest is not valid, the pipeline would be relieved of any refund obligation as to such rate from the date the rate was collected.

The Commission would confine its investigations, and remedial actions (if any) to the disputed rate or practice, and no others. Protests and complaints raising certain specific issues (the proposed regulations require specificity in protests and complaints) should not be the basis for triggering a systemwide inquiry or going into other specific issues not raised. Limiting the scope of investigatory proceedings in this manner seems essential to achieving the Congress' objectives of increasing the efficiency and economy of the Commission's regulations of oil pipelines.

Thus, a proceeding on the issue of whether a given pipeline exercises market power in a market would be limited to evidence relevant to that issue. This would preclude, for example, the introduction or consideration of evidence related to the pipeline's cost of service.

There will be room for interpretation of this proposed restraint on the scope of proceedings. Relevancy is often subject to debate. Under the Commission's proposal, it would be the task of the presiding judge to make the proper rulings to ensure that proceedings remain focused on the issues raised.

6. Opportunity for Pipeline to Respond to Protest or Complaint

Protests to a rate filing must be filed no later than ten days after such filing. The pipeline would be permitted to respond to any protest within five days of the date of filing of the protest, and to any complaint within 30 days (as currently provided in § 385.213 of the Commission's rules). This proposal contemplates that the Commission would examine the pipeline's response to a protest or complaint to make a determination as to whether to commence a formal investigation of the tariff. If the Commission were to determine that formal investigation is not warranted, the protest or complaint would be dismissed. If the Commission were to determine that a formal investigation is warranted, then the matter would proceed to the next stage (ADR procedures, see discussion below). The determination of whether to initiate a formal investigation of a tariff filing will be made within the 30-day statutory notice period.

7. Complaints Against "Grandfathered" Rates

The Act of 1992 provides that complaints against otherwise grandfathered rates may be filed under certain circumstances: A substantial change has occurred since enactment in either the economic circumstances or the nature of the services which were a basis for the rate; the complainant was contractually barred from challenging the rate prior to enactment; or the rate was unduly discriminatory or preferential.[53]

The Commission will not enumerate in advance the specific factual allegations that would cause it to entertain a complaint against rates statutorily deemed to be just and reasonable. The Commission would apply the proposed regulations on standing to any complaints filed against such rates. Thus, the Commission would not investigate grandfathered existing rates unless a complaint meeting one of the statutory exceptions[54] were filed by a person with a direct economic interest in those rates, i.e., a shipper, or would-be shipper, or a person that meets one of the other tests for standing.

8. Elimination of Staff-Initiated Investigations

Section 1802(b) requires the Commission to propose a regulation defining the specific circumstances under which staff may initiate a "protest" (i.e., an investigation). Section 375.306(a) of the current regulations authorizes the Oil Pipeline Board (Board) to exercise the Commission's power under section 15(7) of the ICA to institute investigations of proposed tariff changes. This authority includes suspending a tariff filing on the Board's own motion.[55]

The Commission proposes to eliminate the Board and instead reserve to itself the authority to suspend tariffs, while delegating to Staff Office Directors certain of the other duties currently delegated to the Board.[56] Some duties currently delegated to the Board would not be applicable under the proposed regulations. For example, the granting of special permission to place tariffs in effect on less than 30 days notice and "Fourth Section" waivers—*i.e.*, from the provisions of section 4 of the ICA which would allow a pipeline to charge a greater amount for a shorter distance over the same line or route in the same direction, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates—will be granted automatically under proposed § 341.14 and § 341.15. Rates for depreciation will be considered only

[52] Authority to suspend rate filings, whether protested or not, would lie exclusively with the Commission under the proposed regulations.

[53] Sec. 1803 (b) and (c) of the Act of 1992, 42 U.S.C. 7172 note (1988).

[54] *Id.*

[55] The Board was initially established at the Commission pursuant to section 17(2) of the ICA. Under section 17(2) the Commission has the authority to rescind its delegation to the Board at any time. While section 17(2) does not specifically provide for delegation to Office Directors, it does not bar such delegation, particularly in light of the specific language of sections 401(g) and 402(b) of the DOE Organization Act, which gives the Commission the power to delegate and which transferred the functions and authority related to oil pipeline regulation from the ICC to the Commission.

[56] The Commission would authorize the Chief Accountant or the Chief Accountant's designee to pass upon applications to increase the size, add to or combine property units of oil pipeline companies, and sign all correspondence on behalf of the Commission relating to Annual Report No. 6. The Director of the Office of Pipeline and Producer Regulation or the Director's designee would be delegated authority to grant or deny petitions for waiver of annual charges; accept any uncontested item which has been filed consistent with Commission regulations and policy; reject any filing which patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted; and refer any matter to the Commission which the Director believes should be acted upon by the Commission.

in individual cost-of-service proceedings. Staff would have no independent authority to initiate investigations.

B. Revisions to Existing Procedures

1. Tariff Filing Requirements

The Commission has never significantly altered the tariff regulations it inherited from the ICC.[57] Some of these regulations have remained essentially unchanged for over 60 years.[58] The Commission proposes to revise the regulations contained in parts 341 through 345, 347, 352, 360 and 361 of title 18 of the Code of Federal Regulations. The Commission further proposes to make these revised regulations effective 30 days after issuance and publication of the final rule in the **Federal Register**.[59]

The recommended changes to the existing filing requirements should significantly reduce the burden of the preparation and filing of oil pipeline tariffs. In particular:

- Separate special permission applications would no longer be filed; rather, the request would be made concurrently with the tariff filing. The special permission would be deemed to be granted unless specifically denied within 30 days of the date of the tariff filing.
- Current regulations prohibit the withdrawal of pending tariffs. The revised regulations would permit pending tariff filings to be withdrawn prior to their proposed effective date.
- Format requirements would be revised and simplified to account for technological advances.
- The requirements to file concurrences and powers of attorney with the Commission would be eliminated.
- Requirements related to oil pipeline valuations would be eliminated in their entirety.

Finally, the Commission proposes to require a full 30 days' notice for newly-constructed-pipeline rate filings.

2. Revised Accounting Requirements

The Commission does not propose at this time to modify the regulations relating to the Uniform System of Accounts, with the exception of a minor technical change discussed below. These regulations, to the extent modification is needed, can best be revised following issuance of a final rule on pipeline rates. After issuance of a final rule, the need for any changes in the accounting regulations can better be evaluated.

The Oil Pipeline Board has been regularly granting pipelines waiver of the requirements of Instruction 3–2, relating to the minimum amount for capitalization of property acquisitions. Staff recommended that the Commission increase the minimum amount from $500 to $2,500. The Commission proposes that this technical amendment be made effective 30 days after issuance and publication of the final rule in the **Federal Register**.

C. Alternative Dispute Resolution

Further evidencing Congress' goal to reduce the time and expense associated with the regulation of oil pipeline rates, section 1802(e) of the Act of 1992 requires that the Commission, to the maximum extent practicable, establish alternative dispute resolution (ADR) procedures, including "required negotiations and voluntary arbitration," for use early in a contested rate proceeding.[60] Any rates derived from implementation of ADR must be considered on an "expedited basis."[61]

The Administrative Dispute Resolution Act of 1990 ("ADRA")[62] amends the Administrative Procedure Act[63] by adding a new subchapter to provide explicit statutory authorization allowing federal agencies to use ADR techniques in lieu of litigation to resolve a dispute in the agency's administrative programs when all the participants to the dispute voluntarily agree to its use. ADR methods include the use of a neutral, an individual who functions to aid the participants in resolving the controversy. The ADRA provides that ADR methods may include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination of these, as described below:

Conciliation is an informal process in which the third party tries to bring the parties to agreement by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement, either informally or, in a subsequent step, through formal mediation. Conciliation is frequently used in volatile conflicts and in disputes which the parties are unable, unwilling or unprepared to come to the table to negotiate their differences.[64]

Facilitation is a collaborative process used to help a group of individuals or parties with divergent views reach a goal or complete a task to the mutual satisfaction of the participants. The facilitator functions as a neutral process expert and avoids making substantive contributions. The facilitator's task is to help bring the parties to consensus on a number of complex issues.[65]

Mediation is a structured process in which the mediator assists the disputants to reach a negotiated settlement of their differences. Mediation is usually a voluntary process that results in a signed agreement which defines the future behavior of the parties. The mediator uses a variety of skills and techniques to help the parties reach a settlement but is not empowered to render a decision.[66]

Factfinding is a process used from time to time primarily in public sector collective bargaining. The Fact Finder, drawing on both information provided by the parties and additional research, recommends a resolution of each outstanding issue. It is typically nonbinding and paves the way for further negotiations and mediation.[67]

The *minitrial* is a privately-developed method of helping to bring about a negotiated settlement in lieu of corporate litigation. A typical minitrial might entail a period of limited discovery after which attorneys present their best case before managers with the authority to settle and a neutral advisor who may be a retired judge or other lawyer. The managers then enter settlement negotiations. They may call on the neutral advisor if they wish to obtain an opinion on how a court might decide the matter.[68] The neutral may also be called upon to mediate the dispute.

Arbitration is a relatively formal process in which parties jointly select the decisionmaker to whom they turn over the decisionmaking. The arbitrator, after hearing each side, issues a decision following the procedures agreed to in advance. The ADRA provides for a binding arbitration with limitations that

[57] The ICC's regulations were transferred from 49 CFR (containing ICC regulations) to 18 CFR (containing FERC regulations) by a 1984 rulemaking. See Regulations Preambles 1982–85, FERC Stats. and Regs. ¶30,552 (1984).

[58] In 1928, the ICC issued "Tariff Circular No. 20," which contained many of the filing provisions still extant in the regulations adopted by the FERC.

[59] Other changes, however, would be incorporated into the revised filing requirements effective with the implementation of the revised rate methodologies.

[60] Section 1802(e).

[61] *Id.*

[62] 5 U.S.C. 571–83, as amended by Public Law 102–354, 106 Stat. 944 (August 26, 1992).

[63] 5 U.S.C. 551–557 (1988).

[64] Administrative Conference of the U.S., Sourcebook: Federal Agency Use of Alternative Means of Dispute Resolution (Office of the Chairman, 1987) (Sourcebook) at 44.

[65] *Id.* at 45.

[66] *Id.*

[67] *Id.*

[68] *Id.*

protect the agency's statutory authority. The ADRA's arbitration provision is separately described and fully discussed below.

It is the policy of the Commission to conclude its administrative proceedings as fairly, effectively, efficiently, and expeditiously as possible. To that end, the Commission has long had in place flexible settlement regulations that encourage and promote the use of settlement negotiations and other means to resolve disputes. The Commission now has the opportunity to further develop and refine its policies to achieve less costly, less contentious, and more timely decisions in its oil pipeline rate proceedings. Under the existing framework for the review and determination of its proceedings, the Commission intends to foster the effective and sound use of innovative ADR procedures pursuant to the guidelines established in the ADRA.

Consistent with the Congressional mandate contained in both the Act of 1992 and the ADRA, the Commission encourages participants in its oil pipeline proceedings to consider the use of ADR procedures to assist them in resolving any differences among them. ADR techniques are informal procedures based on the informed consent of all the participants. Flexibility is the mainstay of ADR.

1. Required Negotiation

The Act of 1992 provides that the Commission shall include "required negotiations" in its ADR procedures. In this connection, with respect to all pipeline rates which are suspended, the Commission proposes to send all protested oil pipeline rate filings to a settlement judge for consideration of appropriate disposition of the protest and final action to be taken on the rate filing at the time the Commission issues a suspension order. The settlement judge would be required to convene a conference of all interested parties within a short period of time. Parties to the proceeding would be required to participate in the resolution of these issues. The settlement judge would, as necessary and appropriate, and as may be guided by Commission requirements in the individual proceedings, submit status reports on whether settlement efforts should continue or whether formal hearing procedures should commence. The Commission would, in appropriate cases, provide time limits on the settlement judge.

2. Arbitration

The ADRA establishes procedures for binding arbitration proceedings. To the extent participants wish to use a different arbitration procedure, they should feel free to propose one.

a. Applicability to commission proceedings. Section 1802(e) of the Act of 1992 requires the Commission to provide voluntary arbitration procedures for rate matters involving oil pipelines. The Commission believes that the form of binding arbitration provided in the ADRA should be among those ADR techniques available to participants.

b. Authorization. Participants may at any time submit a proposal to use binding arbitration to resolve all or part of any oil pipeline rate matter in controversy before the Commission. A proposal to use binding arbitration would follow the procedures to be developed consistent with the ADRA and the Commission's responsibilities under the Act of 1992. The proposal would be submitted in writing. To ensure that the use of arbitration is truly voluntary on all sides, the Commission would not require any person to consent to an arbitration proposal as a condition of receiving a contract or benefit. Similarly, no company regulated by the Commission may impose such a condition. Further, an arbitration proposal would be required to have the express consent of all interested parties.

Any agreement to arbitrate would be enforceable under the Arbitration Act.[69] The Senate Report accompanying the ADRA states that the purpose of section 589 of the ADRA is to coordinate and clarify the relationship between the ADRA and the existing Arbitration Act, and stresses that the existing Arbitration Act applies to enforcement of arbitration agreements reached pursuant to the ADRA.[70]

c. Arbitrator. Participants in an arbitration proceeding would be entitled to select the arbitrator. The particular procedure to be used in selecting an arbitrator is not provided; however, the arbitrator is required to meet the requirements of a neutral. An arbitrator, like a neutral as described in proposed § 342.9(e), may be a permanent or temporary officer or employee of the Federal Government (including an administrative law judge), or any other individual acceptable to the participants. The arbitrator must have no official, financial or personal conflict of interest with respect to the issues in controversy, unless the participants waive this restriction. The arbitrator's duties would include conducting hearings, administering oaths, issuing subpoenas to compel attendance of witnesses and production of evidence at hearing. The arbitrator would be expressly authorized to make decisions on rate matters subject to arbitration. As the Senate Report to the ADRA explains:

> This section is intended to provide arbitrators with the appropriate authority and flexibility to conduct arbitral proceedings in an informal and efficient manner and to keep the arbitral proceedings from becoming, in essence, full-blown litigation proceedings. An arbitrator should not use the authority granted in this section to indulge in or permit excessive discovery. Instead, the arbitrator should make appropriate use of the authority provided in this section to gather the necessary materials and information to conduct a fair, effective and expeditious inquiry.
>
> The section also limits arbitrators to the subpoena authority granted by the Arbitration Act and to the agency sponsoring the arbitral proceeding. This language is intended to ensure that the same practices and body of law apply to all arbitrations of disputes with federal agencies, whether initiated under the ADR subchapter in Title 5 or the Arbitration Act in Title 9. It is also intended to ensure that federal agencies do not gain, as a consequence of this Act, any subpoena powers that they do not already possess.[71]

d. Rules of conduct. The Commission proposes to incorporate into its rules the provisions in section 589 of the ADRA that establish basic rules for the conduct of binding arbitration proceedings, including hearing. The arbitrator would set the time and place for the hearing and notify the participants. A record would be prepared, if desired, and evidence presented. The hearing would be conducted expeditiously and informally. The arbitrator could exclude evidence that is irrelevant, immaterial, unduly repetitious or privileged. According to the Senate Report to the ADRA, this common arbitral standard ensures informal and expeditious proceedings.[72] *Ex parte* communications would be prohibited, allowing the arbitrator to impose sanctions for a violation of this prohibition. The arbitrator would be required to issue an award within 30 days of the close of the hearing, unless the participants and arbitrator agree otherwise.

[69] 9 U.S.C. 1 (1982). Section 4 of the Arbitration Act provides that:

"[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement."

[70] S. Rep. No. 543, 101st Cong., 2d Sess. at 13, (1990).

[71] *Id.*

[72] *Id.*

e. Arbitration awards. The ADRA provides standards for the issuance and appeal of arbitral awards. The Commission proposes to adopt those standards. The award should be in writing and include a brief, informal discussion of the factual and legal basis for the award. The prevailing participants should file the award with the Commission and serve all participants. The award would become final 30 days after it is served on all participants; however, the Commission, upon motion or otherwise, could extend this period for and additional 30-day period upon notice of the extension to all participants.

A final award would be binding on the participants and may be enforced under the provisions of the Arbitration Act, as amended by the ADRA. Under the ADRA, a non-party will be able to seek to have an award vacated by courts. The ADRA amended section 10 of the Arbitration Act to provide that a person who was not a party to an arbitration proceeding may obtain judicial review of the award upon a showing that the appealing person has been adversely affected or aggrieved. In addition, that person must demonstrate, pursuant to the amended Arbitration Act, that the use of arbitration or the award is clearly inconsistent with the six factors in the ADRA that govern the determination to use ADR in a proceeding.

f. Vacating an award. As provided in the ADRA, the Commission would establish procedures for the Commission to vacate an award. Any person could request, within 10 days of the filing of an award, that the Commission vacate the award and require that person to provide notice of the request to all participants. Responses to such a request must be filed within 10 days after the request is filed. The Commission, upon request or otherwise, would be able to vacate an arbitration award before the award becomes final. To do so, it must issue a written order to that effect.

The Commission's review of an arbitration award would be based on the statutory standard that applied to the issues resolved, and depends, therefore, on the type of issues involved. The Commission would adopt the ADRA's provision that the award need only discuss informally the factual and legal bases for the award. If the participants wish to require that an award include formal findings of fact and conclusions of law, they may do so by adopting a different standard.

If the Commission vacates an arbitration award, a party to the arbitration proceeding would be able to petition the Commission for an award of the attorney fees and expenses incurred in connection with the arbitration proceeding. The Commission could award the petitioning party those fees and expenses that would not have been incurred in the absence of the arbitration proceeding, unless the Commission finds that special circumstances make the award unjust.

A decision by the Commission to vacate an arbitration award would not be subject to judicial review. Moreover, such a decision would not be subject to rehearing. In this case, rehearing would not be provided because the Commission itself would be acting on the request to vacate so there is no occasion to be reviewing staff action.

VI. Environmental Analysis

The Commission is not preparing an environmental assessment or environmental impact statement in this proceeding because the proposed rules and amendments do not affect the construction or operation of facilities and deal only with rate filing requirements. They therefore have no significant effect on the human environment.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[73] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[74]

Pursuant to section 605(b), the Commission certifies that the proposed rules and amendments, if promulgated, will not have a significant impact on a substantial number of small entities.

VIII. Comment Procedures

Copies of this notice of proposed rulemaking can be obtained from the Office of Public Information, room 3104, 941 North Capitol Street NE., Washington, DC 20426. Any person desiring to file comments should submit an original and fourteen (14) copies of such comments to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 not later than 30 days after the date of publication in the **Federal Register**.

The full text of this notice of proposed rulemaking also is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service, which provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, communications software should be set to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

As stated previously, the Commission intends to proceed with both the ratemaking and the filing procedures parts of this rulemaking simultaneously. The Commission therefore intends to complete the deliberative process in this docket, and issue a final rule, no later than October 24, 1993, the deadline established by Congress for issuance of the rule on ratemaking methodology.

IX. Information Collection Requirements

Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rules.[75] While these proposed rules and amendments contain no new information collection requirements we expect the proposed rule will revise and reduce the reporting requirements under existing FERC–550, Oil Pipeline Rates: Tariff Filings (1902–0089).

The Commission uses the data collected under FERC–550 to investigate the rates charged by oil pipeline companies subject to its jurisdiction, determine the reasonableness of rates, and prescribe just and reasonable rates.

Because of the proposed revisions and expected reduction in public reporting burden under FERC–550, the Commission is submitting a copy of the proposed rule to OMB for its review and approval. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425; and to the Office of Information and Regulatory Affairs, Office of Management and Budget) (Attention: Desk Officer for Federal Energy

[73] 5 U.S.C. 601–612.

[74] 5 U.S.C. 605(b).

[75] 5 CFR 1320.13.

Regulatory Commission), Washington, DC 20503.

List of Subjects

18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

18 CFR Parts 342, 343, 344, 345, 347, 360 and 361

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission gives notice of its proposal to amend, remove or revise parts 341, 342, 343, 344, 345, 347, 352, 360, 361 and 375, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

The following amendments are proposed to be effective 30 days after publication of the final rule in the **Federal Register**.

1. Part 341 is revised to read as follows:

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT AND CARRIERS JOINTLY THEREWITH

Sec.

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

§ 341.0 Application; definitions.

(a) *General application.* (1) Tariffs are for the information and use of the general public. Each carrier must publish, post, and file tariffs which contain in clear, complete, and specific form all the rules and regulations governing the rates and charges for services performed in accordance with the tariff. Tariffs will be published in a manner that ensures the tariffs are readable and that their terms and conditions are easy to understand and apply. The Commission reserves the right to reject any tariff publication or other document that is not in compliance with the law, or to require modification, correction, or reissuance.

(2) This part contains regulations issued by the Federal Energy Regulatory Commission under authority of the Interstate Commerce Act (ICA) to govern the construction and filing of tariffs of oil pipeline companies filing under the ICA. These regulations are in conformance with Title XVIII of the Energy Policy Act of 1992.

(3) All tariffs filed on or after [insert 30 days after date of publication of the final rule in the **Federal Register**] must conform to the rules of this part. Tariffs which are on file as of [insert 30 days after date of publication of the final rule in the **Federal Register**] will not have to be reissued solely to conform to this part.

(4) Each common carrier oil pipeline must post and maintain a complete and current set of all proposed, current, and suspended tariffs which it has issued or to which it is a party, together with an index. The carrier must identify in its posted tariff files any tariff publication under suspension and investigation. Each carrier must afford inquirers an opportunity to examine its tariffs and must provide a system of supervision that will insure the continued maintenance of the tariff files in a proper and readily accessible form.

(b) *Definitions.* (1) *Local rate.* The term "local rate" means a rate for service over the lines or routes of only one carrier.

(2) *Local tariffs.* "Local tariffs" are those which contain local only rates.

(3) *Joint rate.* The term "joint rate" means a rate that applies for service over the lines or routes of two or more carriers made by an agreement between the carriers, effected by a concurrence or power of attorney.

(4) *Joint tariffs.* "Joint tariffs" are those which contain only joint rates.

(5) *Through rates.* The term "through rate" means the total rate from point of origin to destination. It may be a local rate, a joint rate, or a combination of separately established rates.

(6) *Posting.* The term "post" or "posting" means making a copy of an oil pipeline company's tariff available during regular business hours for public inspection in a convenient form and place at the oil pipeline company's principal office and offices where business is conducted with affected shippers.

(7) *Proportional rates.* The term "proportional rates" means rates published to apply only to traffic having a prior transportation movement, a subsequent transportation movement, or both.

(8) *Rule.* The term "rule" means any regulation, term, or condition of service which applies to any rate or service provided by the pipeline under its common carrier obligation.

(9) *Subscriber.* The term "subscriber" means a party who voluntarily or upon reasonable request is furnished at least one copy of a particular tariff publication (including reissues) by the publishing carrier or agent. The term does not pertain to requests for a copy of a tariff without a request for future amendments thereto.

(10) *Tariff publication.* "Tariff publication" includes all parts of a filed tariff or tariff supplement.

§ 341.1 Means of filing.

Filings must be made with the Secretary of the Commission at 825 North Capitol Street, NE., Washington, DC 20426. Filings made by mail must be addressed to the "Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426," with the envelope clearly marked as containing "Oil Pipeline Tariffs."

§ 341.2 Filing requirements.

All tariff publications must be filed with the Commission and must comply with the following requirements:

(a) *Number of copies.* (1) Three copies of each tariff, supplement, and letter of transmittal together with any required justification, must be filed with the Commission.

(2) The carrier must provide each shipper or subscriber a copy of the tariff publication as well as any tariff justification, submitted by first-class mail, or by other means of transmission agreed upon in writing, at the same time it is sent to the Commission for filing.

(b) *Notice period.* All tariffs, or supplements to tariffs (except for adoption notices, adoption supplements, and tariff indexes, filed under §§ 341.6 and 341.9), must be filed with the Commission and posted not less than thirty (30) days nor more than sixty (60) days prior to the proposed

effective date, unless a different notice period is authorized by the Commission.

(c) *Transmittal letter.* (1) Letters of transmittal must contain a statement describing the filing that is being submitted and fully explain any changes to the pipeline's rates, rules, terms or conditions of service. In addition, the transmittal letter must state if a waiver is being requested, and specify the rule, policy or order requested to be waived. The carrier must also identify the tariff(s) or supplement number(s) and the proposed effective date of the tariff publication.

(2) Letters of transmittal must also contain the following certification:

I hereby certify that I have on or before this day sent one copy of each publication listed hereon to each subscriber thereto by first-class mail, or by other means of transmission agreed upon in writing.

(3) If there are no subscribers to the tariff publication being submitted for filing, the letter of transmittal must so certify.

(4) A pipeline filing a tariff publication who requests a receipt for such filing must submit a duplicate copy of the letter of transmittal marked "Receipt requested." Such a request must also contain a postage paid, self-addressed return envelope. The Commission will return one copy of the letter of transmittal showing the date of receipt to the requester.

§ 341.3 Form of tariff.

(a) *Form, size, and type.* (1) All tariffs and supplements thereto must be in book or pamphlet form of size 8½ by 11 inches and must be plainly printed, and legible so as to result in a clear and permanent record. Alterations in writing or erasures may not be made in tariffs or supplements filed with the Commission or posted by the carrier.

(2) The tariff publication must have a margin of ⅝ of an inch on the binding edge.

(b) *Contents of Tariff.* All tariffs must contain, as a minimum, the following information in the following order:

(1) *Title Page.* The title page of each tariff must contain the following information:

(i) The FERC tariff number designation in the upper right hand corner, numbered consecutively, and immediately thereunder will be shown the FERC tariff number designation of the tariff that is canceled, if any;

(ii) The exact corporate name of the carrier;

(iii) The type of rates, e.g., local, joint, or proportional rates and the commodity which the tariff applies on, e.g. crude, petroleum product, jet fuel;

(iv) Governing tariffs, e.g. separate rules and regulations tariffs, if any;

(v) If the tariff is issued pursuant to a specific Commission order;

(vi) The issue date must be shown on the lower left side and the effective date on the lower right side;

(vii) Expiration date, if applicable;

(viii) The name of the issuing officer or duly appointed official issuing the tariff as well as the complete street and mailing address of the carrier and the name and phone number of the individual responsible for compiling the tariff publication.

(2) *Table of Contents.* Tariffs of more than nine pages in length must contain a table of contents. Table of Contents for tariffs of less than ten pages in length are optional.

(3) *A list of participating carriers.*

(4) *Index of Commodities, if applicable.*

(5) *Explanatory statements.* The tariff must contain any necessary statements concerning the proper application of rates and rules in order to remove any ambiguity as to their proper application.

(6) *Rules governing the tariffs.* (i) All of the rules, which in any way affect the rates or the services provided for in the tariff must be published in the tariff. A special rule affecting a particular item or rate must be specifically referred to in such item or in connection with such rate.

(ii) Each rule must be given a separate item number (e.g., Item No. 1), and the title of each rule must be shown in distinctive type.

(iii) Except as provided in § 341.10, no rule will be included which in any way substitutes for any rate named in the tariff, a rate found in any other tariff. No rule will provide that traffic of any nature will be "transported only by special agreement" or any other provision of similar meaning.

(iv) Where it is not desirable or practicable to include the governing rules and regulations in the rate tariff, such rules and regulations may be separately published in a general rules tariff. Rate tariffs that do not contain rules and regulations must make specific reference, by FERC Tariff number, to the governing general rules tariff.

(v) When joint rate tariffs refer to a separate governing rules tariff such separate tariff must be concurred in by all joint carriers, as reflected in § 341.7.

(7) *Statement of Rates.* Only one rate will be on file for each service rendered. Rates must be stated in a clear and explicit form in cents, or in dollars and cents, per barrel or other specified unit. The rates must be arranged with the names or designations of the places from and to which they apply all arranged in a simple and systematic manner. Any related services performed by the carrier must be clearly identified and explained in connection with the rates. Duplicative or conflicting rates for the same service are prohibited.

(8) *Routing.* Routing over which the rates apply must be stated in such a manner that the actual routes may be definitely ascertained.

(9) *Explanation of abbreviations and reference marks.* Reference marks, abbreviations, and note references must be explained at the end of each tariff publication. U.S. Postal Service state abbreviations and other commonly used abbreviations need not be explained.

(10) *Changes to be indicated in tariff or supplement.* (i) All tariff publications must clearly identify where changes have been made, in close proximity to the change, in existing rates or charges, rules, regulations or practices, or classifications by use of one of the following letter designations or uniform symbols:

Description	Option 1	Option 2
Increase	↑	[I]
Decrease	↓	[D]
Change in wording only	▲	[W]
Cancel	■	[C]
Reissued item	□	[R]
Unchanged rate	⇆	[U]
New	√	[N]

(ii) Reissued items must be designated with the number of the tariff supplement in the square in which the item was first issued or amended or if the letter designation is used, the number of the supplement must be shown in connection with the letter. In addition, the references must be explained at the end of the tariff. For example "[R2] Reissued from Supplement No. 2, effective _____ ____, 19____."

(iii) The symbols and letter designations contained in paragraph (10)(i) of this section must not be used for any other purpose.

(iv) When a change of the same character is made in all or in substantially all rates in a tariff or supplement or page thereof, that fact, and the nature of such change, must be indicated in distinctive type at the top of the title page of such issue, or at the top of each page, respectively, in the following manner: "All rates in this issue are increases," or "All rates on this page are reductions unless otherwise indicated."

(v) When a tariff or supplement, canceling a previous tariff publication, omits points of origin or destination, or

rates, rules, regulations, or routes which were contained in the prior tariff publication, the new tariff or supplement must indicate the cancellation; and further, if such omissions effect changes in charges or services, that fact must be indicated by the use of the symbols prescribed in paragraph (10)(i) of this section.

(11) Tariffs filed at the Commission are required to be consecutively numbered. Likewise, supplements to a tariff are required to be consecutively numbered.

§ 341.4 Filing requirements for amendments to tariffs.

(a) *Supplements to tariffs.* (1) The number of supplements will be limited to one effective supplement per tariff except that cancellation, postponement, adoption, correction and suspension supplements will not be included in the limitation.

(2) Any item numbers that are canceled or amended must be clearly identified. Reissued items from prior supplements must also be brought forward in the current supplement and properly referenced with the symbols in § 341.3(b)(10)(i). Cancellation of an item by supplement must be made by bringing forward the item number with an added capital letter suffix in alphabetical sequence. For example: "Item 445–A cancels Item 445."

(b) *Cancellation supplements.* When tariffs are canceled without reissue, a cancellation supplement must be filed.

(c) *Postponement supplements.* Supplements postponing the effective date of pending tariff filings must be filed prior to the proposed effective date of the filing. No postponement supplement may postpone the effective date for more than 30 days.

(d) *Adoption supplements.* An "adoption supplement" is a supplement filed to adopt the tariff of another carrier. An adoption supplement must be filed as necessary to provide the notice required in section 341.6.

(e) *Correction supplements.* A "correction supplement" is a supplement filed to correct a typographical or clerical error. A correction supplement is not counted in the number of effective supplements allowed per tariff. However, only three (3) correction supplements are permitted per tariff.

(f) *Suspension supplements.* Within fifteen days of the date of the suspension order, a suspension supplement must be filed for each tariff or part thereof suspended. The suspension supplement must also be served on shippers and subscribers. The supplement must contain the date it is issued (no effective date is used). Further, it must contain a reproduction of the ordering paragraphs of the Commission's suspension order followed by a statement that the tariff or portion thereof was suspended until the date stated in the Commission's order and reference the Commission's docket number under which the suspension order was issued.

§ 341.5 Cancellation of tariffs and rates.

Oil pipeline carriers must cancel prior tariffs and rates when the tariffs are reissued. When a tariff is canceled in whole or in part by a supplement thereto, the supplement must show where the rates will be found thereafter or what rates will thereafter apply. If the service in connection with the particular tariff is no longer in interstate commerce, the tariff or supplement must so state.

§ 341.6 Adoption rule.

(a) The Commission will be notified by the pipeline when there is:

(1) A change in legal name of carrier or when all carrier properties are transferred, or

(2) A change in ownership of only a portion of the carrier's property.

(b) Notification of these occurrences must be by tariff publication filed as soon as possible but no later than 30 days following such occurrence. Filing of adoption notices and adoption supplements require no notice period.

(c) *Complete adoption.* (1) When the legal name of a carrier is changed, or when ownership of all the carrier's properties is transferred to another company, the adopting carrier must file and post an adoption notice, numbered in its own FERC Tariff series, reading as follows:

The _____(legal name of adopting carrier) hereby adopts and makes its own all tariff publications of _____(name of adopted carrier), effective _____(date).

(2) In addition to the above adoption notice, the adopting carrier must concurrently file a consecutively numbered supplement to each of the adopted carrier's tariffs covered by the adoption notice, reading as follows:

Effective _____(insert date shown on adoption notice) this tariff publication because the tariff of the _____(legal name of adopting carrier) as per its adoption notice FERC No. _____.

(3) Such supplements issued under authority of this section must contain no other matter, and must refer to section 341.6.

(4) Rates applying locally on the adopted line(s) must be transferred within thirty (30) days of the filing of the adoption notices and supplements into the FERC Tariff series of the adopting carrier on thirty (30) days' notice as provided for in § 341.2(b). Changes to the tariff(s) can be made at this time in accordance with the tariff filing requirements contained in this part.

(d) *Partial adoption.* (1) When the ownership of only a portion of a carrier's properties is transferred to another carrier, the carrier which will thereafter own the properties (adopting carrier) must file and post an adoption notice, numbered in its own FERC Tariff series, containing the statement as follows:

The _____(legal name of adopting carrier) hereby adopts and makes its own, the tariffs of _____(legal name of adopted carrier) for the following transportation movement(s) _____(identify by FERC tariff number, origin, and destination point(s)), effective _____(date of adoption).

(2) If there is a point on the transferred portion which will also continue to remain a point on the former owner's line, a reference must be provided in connection with the name of that point, explaining the common junction point.

(3) In addition to the above adoption notice, the former owner (adopted carrier) must immediately file a consecutively numbered supplement to each of its tariffs covered by the adoption notice, reading as follows:

Effective _____(date of adoption notice) this tariff became the tariff of the _____(legal name of adopting carrier) for the following transportation movement(s) _____(origin and destination point(s)), effective _____(date of adoption), as per its adoption notice FERC tariff number _____.

(4) Adoption supplements must contain no other matter, and must refer to § 341.6.

(5) Rates applying locally on the adopted portion must be transferred within 30 days of the filing of the adoption notices and supplements into the FERC Tariff series of the adopting carrier on 30 days' notice as provided for in § 341.2(b). Where rates are transferred from tariffs of the adopted carrier to tariffs of the adopting carrier, the adopting carriers must establish the rates in its tariffs and the adopted carrier must cancel the corresponding rates from its tariffs effective on the same date with a reference to the FERC Tariff number of the adopting carrier for rates applying thereafter. Changes to the tariff(s) will be made in accordance with the tariff filing requirements contained in this part.

§ 341.7 Concurrences.

(a) A concurrence is the agreement of a carrier to participate in the joint rates or regulations published by another carrier.

(b) Concurrences must be maintained at carrier's offices and produced upon request. Cancellations or changes to concurrences affecting FERC tariffs, must be shown in those tariffs.

§ 341.8 Terminal and other services.

Specific rules must be published in the tariff for services (e.g. regulations governing the specifications, prorationing of capacity, demurrage, odorization, carrier liability, quality bank, reconsignment, in-transit transfers, storage, loading and unloading, gathering, terminalling, batching, blending, commingling, connection policy and all other charges, services, allowances, absorptions and rules which in any way increase or decrease the amount to be paid on any shipment or which increase or decrease the value of service to the shipper.) Tariffs authorizing such services or providing charges or allowances related to those services must clearly show their application.

§ 341.9 Index of tariffs.

(a) Each carrier must publish as a separate tariff publication, under its FERC Tariff numbering system, a complete index of all effective tariffs to which it is a party, either as initial, intermediate, or delivering carrier. The index must be arranged in sections as indicated in paragraphs (b), (c), and (d), of this section and must show as to each tariff:

(1) the FERC Tariff number,

(2) the full name of issuing carrier or agent,

(3) the type of tariff or description of the traffic to which it applies, including origin and destination points, and

(4) whether the tariff contains rates for transportation by mode other than pipeline.

(b) The first section of a tariff index will contain a list of all tariffs in which the carrier is an initial carrier in the following order: Specific commodity tariffs, general commodity tariffs, and miscellaneous tariffs (e.g. rules and regulations, terminal services, and transfers)—arranged alphabetically.

(c) The second section of a tariff index will contain a list of all tariffs in which the carrier is a delivering carrier arranged in the manner described in the first section. This section must also include those tariffs in which the carrier is an intermediate carrier, if any.

(d) The third section of a tariff index will contain a complete list of the FERC Tariff numbers of the pipeline's own effective tariffs arranged in numerical order.

(e) The index must be kept current by supplements numbered consecutively which may be issued quarterly. At a minimum, the index must be reissued every four years.

(f) The title page of each index and supplement thereto, must contain the issue date but not the effective date. The thirty (30) days' notice period contained in § 341.2(b) does not apply to indexes and their supplements.

§ 341.10 Intermediate application of rates.

(a) Tariffs may provide for the application of rates from, or to, intermediate points.

(b) If the intermediate point is to be used on a continuous basis, then the carrier must file a tariff publication applicable to the transportation movement within 30 days of the start of such service.

§ 341.11 Rejection of tariffs and other filed materials.

(a) The Commission may reject tariffs or any other material submitted for filing which fail to comply with the requirements set forth in this part or violate any statute, rule or order of the Commission.

(b) The FERC Tariff number assigned to a tariff publication which has been rejected may not be used again. The tariff publication filed in its place must bear the following notation: "Issued in lieu of _____(here identify the rejected tariff publication), rejected by the Commission."

§ 341.12 Informal submissions.

Oil pipeline carriers may informally submit tariffs or material relating thereto for suggestions of Staff prior to the official filing.

§ 341.13 Withdrawal of proposed tariff publications.

A proposed tariff publication which is not yet effective may be withdrawn at any time by notice to the Commission, made by a letter addressed to the Secretary with a certification that all shippers have been notified by copy of such notice of withdrawal.

§ 341.14 Special permission.

(a) *Procedure for requesting waiver of notice and tariff requirements under section 6 of the Interstate Commerce Act.* (1) *Filing of tariffs simultaneously with applications.* Applications for waiver of Section 6(3) of the Interstate Commerce Act must be filed concurrently with the tariff publication being proposed. The letter of transmittal conveying this filing must prominently identify the filing as requesting a waiver under section 6(3) of the Interstate Commerce Act. The application must describe in detail any unusual circumstance or emergency situation which may aid the Commission in evaluating the application. If shortened notice period is requested, the applicant must state the emergency situation which would require shortened of the statutory notice. All applications for waiver of the notice requirements must be filed by the carrier or agent that holds authority to file the proposed changes. If the application requests permission to make changes in joint tariffs it must also state that it is made on behalf of all carriers party to the proposed change. Tariff publications issued on short notice must contain the following statement on the Title Page(s):

Issued on _____[insert number] days notice under authority of 18 CFR 341.14. This tariff publication is conditionally accepted subject to refund pending a thirty review period.

(2) *Tariff publication conditionally accepted subject to refund.* To permit short-notice filings to become effective as requested, the tariffs filed concurrently with a special permission request for short (less than 30 days) notice will be conditionally accepted for filing, and will be made subject to refund until the Commission has had a full 30 days review period in which to process the filing. Refunds will be collected with interest as calculated according to § 340.1 of this chapter. The refund obligation will automatically terminate with no refunds due at the end of the full 30-day notice period absent an order to the contrary issued by the Commission.

(3) *Special permission granted.* The special permission requested will be deemed automatically granted at the end of the full 30-day notice period absent an order denying such request.

§ 341.15 Long and short haul or aggregate of intermediate rates.

(a) Requests for relief from the provisions of section 4 of the Interstate Commerce Act, allowing the pipeline to charge a greater amount for a shorter distance over the same line or route in the same direction, or to charge any greater compensation as a through rate that the aggregate of the intermediate rates, may be filed by any oil pipeline carrier. Such request will be deemed granted unless the Commission denies the request within 15 days of the filing.

(b) The information to be provided to the Commission upon filing of a request for section 4 relief must contain the following information:

(1) The name(s) of the carrier(s) for which the relief is being requested.

(2) The FERC tariff number(s) which contain the rates or charges referred to in the application, and identification of all the particular and related rates in question delineating origin and destination points.

(3) An accurate and complete statement giving the basis and reasoning why section 4 relief is necessary.

(4) A statement that the lower rates for longer than for shorter hauls over the same line or route are reasonably compensatory.

(5) A map showing the pipeline(s) and origin and destination points in question and other pertinent information.

(c) Applications for section 4 relief and the attendant information must be filed concurrently with the tariff or tariff supplement filing establishing those rates. The transmittal letter conveying this filing to the Commission must prominently identify the filing as requesting section 4 relief.

(d) Tariffs or supplements filed containing fourth-section rates must plainly state on the title page of the tariff or supplement that the rate(s) contained therein contravene section 4 of the ICA.

(e) All carriers are hereby authorized, in the making up of through rates by aggregating intermediate rates, to round the resultant through rate to the nearest 0.5 or whole cent.

PART 342—LONG-AND-SHORT-HAUL AND AGGREGATE-OF-INTERMEDIATE RATES—PIPELINES—[REMOVED]

2. Part 342 is removed and reserved.

PART 343—POSTING TARIFFS OF COMMON CARRIER PIPELINES—[REMOVED]

3. Part 343 is removed.

4. Part 344 is revised to read as follows:

PART 344—FILING QUOTATIONS FOR GOVERNMENT SHIPMENTS AT REDUCED RATES

Sec.

344.1 Applicability.

344.2 Manner of submitting quotations.

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

§ 344.1 Applicability.

The provisions of this part will apply to quotations or tenders made by all pipeline common carriers to the United States Government, or any agency or department, thereof, for the transportation, storage, or handling of petroleum and petroleum products at reduced rates as permitted by section 22 of the ICA. Excepted are filings which involve information, the disclosure of which would endanger the national security.

§ 344.2 Manner of submitting quotations.

a. *Copies.* Exact copies of the quotation or tender must be submitted to the Commission concurrently with the submittal of the quotation or tender to the Federal department or agency for whose account the quotation or tender is offered or the proposed services are to be rendered.

b. *Filing in duplicate.* All quotations or tenders must be filed in duplicate. One of these copies must be signed and both copies must clearly indicate the name and official title of the officer executing the document.

c. *Filing procedure.* Both copies must be filed with a letter of transmittal which prominently indicates that the filing is in accordance with section 22 of the ICA. The filing must be filed with the Secretary and addressed to the "Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426," with the envelope marked as containing "Oil Pipeline Tariffs—Section 22 Quotations." A pipeline who requests a receipt for the accompanying documentation must submit the letter of transmittal in duplicate and include a postage-paid, self-addressed envelope. One copy showing date of receipt by the Commission will be returned to the requester.

d. *Numbering.* The copies of quotations or tenders which are filed with this Commission by each carrier must be numbered consecutively.

e. *Supersession of a quotation or tender.* A quotation or tender which supersedes a prior quotation or tender must, by a statement shown immediately under the number of the new document, cancel the prior document number.

PART 345—SECTION 5a APPLICATIONS—[REMOVED]

5. Part 345 is removed.

PART 347—COMPETITIVE BIDS OIL PIPELINE—[REMOVED]

6. Part 347 is removed.

PART 352—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

7. The authority citation for part 352 is revised to read as follows:

Authority: 49 U.S.C. 12, 20.

8. Part 352, instruction 3–2 of the Instructions for Carrier Property Accounts is revised to read as follows:

Instructions for Carrier Property Accounts

* * * * *

3–2. *Minimum Rule.* (a) To avoid undue refinement in accounting, carriers must charge to operating expenses acquisitions of property (other than land) including additions and improvements costing less than $2,500. Expenditures made under a general plan will not be parceled to meet the minimum nor will related items be combined to avoid the minimum.

(b) An amount of less than $2,500 may be adopted for purposes of this rule provided the carrier first notifies the Commission of the amount it proposes to adopt and thereafter makes no change in the amount unless authorized to do so by the Commission.

* * * * *

PART 360—REPORTING OF DATA FOR INITIAL PIPELINE VALUATION—[REMOVED]

9. Part 360 is removed.

PART 361—REGULATIONS GOVERNING THE REPORTING OF PROPERTY CHANGES, PIPELINE CARRIERS—[REMOVED]

10. Part 361 is removed.

The following amendments are proposed to be effective 365 days after publication of the final rule in the Federal Register.

1. Part 342 is added to read as follows:

PART 342—OIL PIPELINE RATE METHODOLOGIES AND PROCEDURES

Sec.

342.0 Applicability.

342.1 Definitions.

342.2 Ratemaking methodologies.

342.3 Indexing.

342.4 Other methods.

342.5 Protests and complaints.

342.6 Filing of protests and responses.

342.7 Commission action on rate filings in absence of protest.

342.8 Commission action on complaints.

342.9 Alternative dispute resolution in oil pipeline rate matters.

Authority: 5 U.S.C. 571–83; 42 U.S.C. 7101–7532; 49 App. U.S.C. 1–85; 42 U.S.C. 7172 note.

§ 342.0 Applicability.

The Commission's Rules of Practice and Procedure will govern procedural matters in oil pipeline proceedings under the Interstate Commerce Act, except to the extent a procedural rule is specified in this part, in which case the rule in this part will govern.

§ 342.1 Definitions.

(a) Protest—A filing challenging a rate change filed under section 15(7) of the Interstate Commerce Act.

(b) Complaint—A filing challenging an existing rate under section 13(1) of the Interstate Commerce Act.

§ 342.2 Ratemaking methodology.

Each pipeline subject to the jurisdiction of the Commission under the Interstate Commerce Act must establish its rates subject to such Act pursuant to §§ 342.3 and 342.4.

§ 342.3 Indexing.

A pipeline must establish rates pursuant to this section, unless § 342.4 applies.

(a) *Information Required to be Filed with Tariff.* The pipeline must provide a compilation showing the proposed new rate, the prior rate and the allowed ceiling for the same movement. No other information is required to accompany the proposed new tariff.

(b) *Rate Changes.* The rate charged by a pipeline may be changed, at any time, to a level which does not exceed the ceiling established by § 342.3(c), upon compliance with the applicable filing and notice requirements and with § 342.3(a).

(c) *Derivation of the Ceiling Level.* The change in the ceiling level will be derived by a pipeline in accordance with the following:

(1) A pipeline will average the final revised quarterly values for the most recent calendar year of the Gross Domestic Product, Implicit price Deflator (GDP–IPD) published by the U.S. Department of Commerce, Bureau of Economic Analysis.

(2) The pipeline will then average the quarterly values of the GDP–IPD for the next previous calendar year.

(3) The pipeline will then compute the ratio of the quarterly average of the GDP–IPD for the most recent year to that of the next previous year. The ratio so derived will be used by the pipeline to determine the total increase or decrease, for the current year, from the previous year's established ceiling for each individual tariff rate.

(d) *Rate Decreases.* If the ceiling level computed pursuant to § 342.3(c) is below the existing filed rate of a pipeline, the pipeline must, within 30 days of the publication by the Commerce Department of the final revised GDP–IPD for the 4th quarter of each year, file to reduce its existing rates to or below the new ceiling.

(e) *Notice Period.* A pipeline must provide at least 30 days' notice of the effective date of a rate change filed under this section, except as modified by special permission requested pursuant to § 341.14 of this Chapter.

§ 342.4 Other methods.

(a) *Cost-of-service rates.* A pipeline may establish rates pursuant to this section if it shows that it has been affected by such substantial unforeseeable and uncontrollable extraordinary circumstances that application of the index provided in § 342.3 would fail to result in a just and reasonable rate within the meaning of the Interstate Commerce Act. A pipeline must at a minimum submit information concerning such extraordinary circumstances and costs incurred in sufficient detail to demonstrate the severity of the adverse impact upon the financial condition of the pipeline. A pipeline that makes such a showing may establish the rate(s) in question based upon the cost of providing the service covered by the rate(s). Provided, that a rate established pursuant to this section can be subsequently changed only in accordance with § 342.3, unless the pipeline, in conjunction with and relevant to such subsequent change, makes a showing fulfilling the requirements of this section.

(b) *Initial base rates for new service.* Initial base rates for new service must be charged at the rate agreed upon between the pipeline and the shipper. Any changes to such rates must be in accordance with § 342.3.

(c) *Market-based rates.* Nothing in this section will preclude a pipeline from charging market-based rates upon establishing that it lacks significant market power in the market in which it proposes to charge such rates.

§ 342.5 Protests and complaints.

This section applies to protests and complaints filed under the Interstate Commerce Act.

(a) *Standing to File Protest.* The Commission will accept for filing only those protests filed by persons with standing. Protests filed by persons without standing will be dismissed. Except as provided in paragraph (a) (2), (3) and (4) of this section, no person will have standing unless it ships, has attempted to ship, or plans to ship, over the route covered by the rate(s) or is affected by the practice in question.

(1) Each person with standing must file, along with the protest, a verified statement that it has shipped, attempted to ship or plans to ship over the route in question.

(2) A person that competes with a pipeline will have standing to file a protest only with respect to a claim that the pipeline is engaging in anti-competitive practices in violation of the Interstate Commerce Act. Such a claim must be supported in the protest by a verified statement containing specific facts to demonstrate the nature and extent of the alleged anticompetitive practices.

(3) A person that does not fulfill the requirements of paragraph (a)(1) or (2) of this section, will have standing to file a protest only upon a showing that the rate or practice sought to be challenged causes the person substantial economic injury and that no other party can adequately represent such person's interests. Such a showing must be supported by a verified statement containing specific facts.

(4) State regulatory commissions or other affected State or Federal agencies will have standing to file a protest under this section.

(b) *Other Requirements for Filing Protests or Complaints.* (1) *Rates established under § 342.3.* A protest or complaint filed against rates established pursuant to § 342.3 must allege specific facts showing that the rates violate a provision of the Interstate Commerce Act, or of these regulations, or that the filing contains typographical or computation errors. The Commission will not consider an allegation, whether made in a protest or a complaint, that the rates to not reflect the pipeline's actual cost-of-service; provided, however, that a protestant or complainant will be heard upon a claim, supported by specific facts, that because of a substantial change in the economic circumstances of, or the nature of the service provided by, the oil pipeline which were a basis for the rate, the rate or the application of the index to the rate is not just and reasonable within the meaning of the Interstate Commerce Act; provided, further, that in any proceeding upon such a claim the fact that the rate level is within the applicable ceiling will constitute a prima facie showing that the rate is just and reasonable. This subparagraph will not apply to a complaint under section 13(1) of the Interstate Commerce Act against a rate in effect on the effective date of this part, and which has not been deemed just and reasonable under title XVIII of the Energy Policy Act of 1992 or determined to be just and reasonable by previous Commission order.

(2) *Rates established under § 342.4.* A protest or complaint filed against rates established pursuant to § 342.4 must allege specific facts showing that the rates violate a provision of the Interstate Commerce Act or of the Commission's regulations; or does not reflect the pipeline's cost-of-service applicable to the movement in question.

(3) *Non-rate matters.* A protest or complaint filed against a pipeline's operations or practices, other than rates, must allege specific facts showing that the operations or practices violate a provision of the Interstate Commerce Act, or of the Commission's regulations.

(4) A protest or complaint that does not meet the requirements of paragraph (b) (1), (2), or (3) of this section, whichever is applicable, will be dismissed.

§ 342.6 Filing of protests and responses.

(a) Any protest to a rate filing by an oil pipeline must be filed not later than 10 days after the filing of such rate change.

(b) The pipeline may file an answer to a protest no later than 5 days from the filing of the protest.

(c) Commission action, including any hearings or other proceedings, on a protest will be limited to the issues raised in such protest. If a filing is protested, the Commission will determine within 30 days of the tariff filing whether to initiate a formal investigation.

§ 342.7 Commission action on rate filing in absence of protest.

A filing for a rate which is not protested and which has been made in accordance with all applicable requirements will be permitted to go into effect without suspension upon the expiration of the applicable notice period; provided, that the Commission may suspend the effective date of a rate filing proposing to change a rate that is currently subject to investigation and refund.

§ 342.8 Commission action on complaints.

(a) The pipeline must file a response to a complaint no later than 30 days after the filing of such complaint.

(b) Commission action, including any hearings or other proceedings, on a complaint will be limited to the issues raised in such complaint.

§ 342.9 Alternative dispute resolution in oil pipeline rate matters.

In addition to the provisions in §§ 385.601–385.603 of this chapter pertaining to settlement of cases before the Commission, the following provisions are applicable to oil pipeline rate matters.

(a) *Conferences.* The Commission or other decisional authority, upon motion or otherwise, may convene a conference of the participants in a proceeding at any time for any purpose related to the conduct or disposition of the proceeding, including submission and consideration of offers of settlement or the use of alternative dispute resolution procedures.

(b) *Required Negotiation.* The Commission or other decisional authority may require parties to enter into good faith negotiations to settle oil pipeline rate matters. The Commission will refer all protested rate filings to a settlement judge pursuant to § 385.603 of this chapter for recommended resolution. Failure to participate in such negotiations in good faith will be grounds for decision against the party so failing to participate on any issue that is the subject of negotiation by other parties.

(c) *Alternative Dispute Resolution.* (1) Participants may, subject to the limitations of paragraph (c)(2) of this section, use alternative means of dispute resolution to resolve all or part of any pending matter if the participants agree. The alternative means of dispute resolution will use voluntary procedures that supplement, rather than limit, other available dispute resolution techniques.

(2) The Commission will consider not using an alternative dispute resolution proceeding if:

(i) A definitive or authoritative resolution of the matter is required for precedential value;

(ii) The matter involves or may bear upon significant questions of policy that require additional procedures before a final resolution may be made, and the proceeding would not likely serve to develop a recommended policy;

(iii) Maintaining established policies is of special importance;

(iv) The matter significantly affects persons or organizations who are not parties to the proceeding;

(v) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide a record; or

(vi) The Commission must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Commission's fulfilling that requirement.

(3) If one or more of the factors outlined in paragraph (c)(2) of this section is present, alternative dispute resolution may nevertheless be used if the alternative dispute resolution proceeding can be structured to avoid the identified factor or if other concerns significantly outweigh the identified factor.

(4) A determination to use or not to use a dispute resolution proceeding is not subject to judicial review.

(5) Settlement agreements reached through the use of alternative dispute resolution will be subject to the provisions of § 385.602 of this chapter, unless the decisional authority, upon motion or otherwise, orders a different procedure.

(d) *Definitions.*—(1) *Alternative means of dispute resolution* means any procedure that is used, in lieu of an adjudication, to resolve oil pipeline rate issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination thereof;

(2) *Award* means any decision by an arbitrator resolving the issues in controversy;

(3) *Dispute resolution communication* means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or non-party participant. A written agreement to enter into a dispute resolution proceeding, or a final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(4) *Dispute resolution proceeding* means any alternative means of dispute resolution that is used to resolve an issue in controversy in which a neutral may be appointed and specified parties participate;

(5) *In confidence* means information is provided:

(i) With the expressed intent of the source that it not be disclosed, or

(ii) Under circumstances that create a reasonable expectation on behalf of the source that the information will not be disclosed;

(6) *Issue in controversy* means an issue which is or is anticipated to be material to a decision in a proceeding before the Commission and which is the subject of disagreement between participants who would be substantially affected by the decision or between the Commission and any such participants;

(7) *Neutral* means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(e) *Neutrals.* (1) A neutral may be a permanent or temporary officer or employee of the Federal Government (including an administrative law judge), or any other individual who is acceptable to the participants to a dispute resolution proceeding. A neutral must have no official, financial, or personal conflict of interest with respect to the issues in controversy, except that a neutral who is not a government

employee may serve if the interest is fully disclosed in writing to all participants and all participants agree.

(2) A neutral serves at the will of the participants, unless otherwise provided.

(3) Neutrals may be selected from among the Commission's administrative law judges, from rosters kept by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, the American Arbitration Association, or from any other source.

(f) *Submission of proposal to use alternative dispute resolution.* (1) The participants may at any time during a proceeding submit a written proposal to use alternative means of dispute resolution to resolve all or part of any matter in controversy or anticipated to be in controversy before the Commission.

(2) For matters set for hearing, a proposal to use alternative means of dispute resolution must be filed with the presiding administrative law judge.

(3) Proposals involving binding arbitration must be filed with the Secretary for consideration by the Commission.

(4) For all other matters, a proposal to use alternative means of dispute resolution may be filed with the Secretary for consideration by the appropriate decisional authority.

(5) The appropriate decisional authority will issue an order, approving or denying a proposal to use alternative means of dispute resolution. Denial of a proposal to use alternative dispute resolution will be in the form of an order and will identify the specific reasons for the denial. A proposal to use alternative dispute resolution is deemed approved unless an order denying approval is issued within 30 days after the proposal is filed.

(6) Any request to modify a previously-approved ADR proposal must follow the same procedure.

(g) *Contents of proposal.* A proposal to use alternative means of dispute resolution must be in writing and include:

(1) A general identification of the issues in controversy intended to be resolved by the proposed alternative dispute resolution method;

(2) A description of the alternative dispute resolution method(s) to be used;

(3) The signatures of all participants or evidence otherwise indicating the consent of all participants; and

(4) A certificate of service.

(h) *Monitoring the alternative dispute resolution proceeding.* The decisional authority may order reports on the status of the alternative dispute resolution proceeding at any time.

(i) *Termination of alternative dispute resolution proceeding.* (1) The decisional authority, upon motion or otherwise, may terminate any ADR proceeding by issuing an order to that effect.

(2) A decision to terminate an alternative dispute resolution proceeding is not subject to judicial review.

(j) *Confidentiality in Dispute Resolution Proceedings.* (1) Except as provided in paragraphs (j) (4) and (5) of this section, a neutral in a dispute resolution proceeding will not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication or any communication provided in confidence to the neutral, unless:

(i) All participants in the dispute resolution proceeding and the neutral consent in writing;

(ii) The dispute resolution communication has already been made public;

(iii) The dispute resolution communication is required by statute to be made public, but a neutral should make the communication public only if no other person is reasonably available to disclose the communication; or

(iv) A court determines that the testimony or disclosure is necessary to:

(A) Prevent a manifest injustice;

(B) Help establish a violation of law; or

(C) Prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential.

(2) A participant in a dispute resolution proceeding must not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication; unless:

(i) All participants to the dispute resolution proceeding consent in writing;

(ii) The dispute resolution communication has already been made public;

(iii) The dispute resolution communication is required by statute to be made public;

(iv) A court determines that the testimony or disclosure is necessary to:

(A) Prevent a manifest injustice;

(B) Help establish a violation of law; or

(C) Prevent harm to the public health and safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential; or

(v) The dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of the agreement or award.

(3) Any dispute resolution communication that is disclosed in violation of paragraph (j) (1) or (2) of this section will not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(4) The participants may agree to alternative confidential procedures for disclosures by a neutral. The participants must inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of paragraph (j)(1) of this section that will govern the confidentiality of the dispute resolution proceeding. If the participants do not so inform the neutral, paragraph (j)(2)(i) of this section will apply.

(5) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral will make reasonable efforts to notify the participants of the demand. Any participant who receives the notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information waives any objection to the disclosure.

(6) Nothing prevents the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(7) Paragraphs (j) (1) and (2) of this section will have no effect on the information and data that are necessary to document any agreement reached or order issued pursuant to a dispute resolution proceeding.

(8) Paragraph (j) (1) and (2) of this section will not prevent the gathering of information for research and educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the participants and the specific issues in controversy are not identifiable.

(9) Paragraph (j) (1) and (2) of this paragraph will not prevent use of a dispute resolution communication to

resolve a dispute between the neutral in a dispute resolution proceeding and a participant in the proceeding, so long as the communication is disclosed only to the extent necessary to resolve the dispute.

(k). *Arbitration.* (1) The participants may at any time submit a written proposal to use binding arbitration under the provisions of this Rule to resolve all or part of any matter in controversy, or anticipated to be in controversy, before the Commission.

(2) The proposal must be submitted as provided in below.

(3) The proposal must be in writing.

(4) An arbitration proceeding under this rule may be monitored and terminated.

(5) No person may be required to consent to arbitration as a condition of entering into a contract or obtaining a benefit. All interested parties must expressly consent to arbitration under this rule.

(6) An agreement to arbitrate a matter pursuant to this provision will be enforceable pursuant to the Arbitration Act (9 U.S.C. 4), and no action will be dismissed nor will relief be denied on the grounds that the matter is against the United States or that the United States is an indispensable party.

(7) The participants to an arbitration proceeding are entitled to select the arbitrator. The arbitrator must be a neutral.

(8) An arbitrator to whom a dispute is referred under this section may:

(i) Regulate the course of and conduct arbitral hearings;

(ii) Administer oaths and affirmations;

(iii) Compel the attendance of witnesses and the production of evidence to the extent the Commission is authorized by law to do so; and

(iv) Make awards.

(v) The arbitrator will set a time and place for the hearing on the dispute and must notify the participants not less than 5 days before the hearing.

(vi) Any participant wishing that there be a record of the hearing must:

(A) Prepare the record;

(B) Notify the other participants and the arbitrator of the preparation of the record;

(C) Furnish copies to all identified participants and the arbitrator; and

(D) Pay all costs for the record, unless the participants agree otherwise or the arbitrator determines that the costs should be apportioned.

(vii) Participants to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(viii) The arbitrator may, with the consent of the participants, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each participant has an opportunity to participate.

(ix) The hearing must be conducted expeditiously and in an informal manner.

(x) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(xi) The arbitrator will interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(xii) No interested person will make or knowingly cause to be made to the arbitrator an unauthorized *ex parte* communication relevant to the merits of the proceeding, unless the participants agree otherwise. If a communication is made in violation of this prohibition, the arbitrator will ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of such communication, the arbitrator may require the offending participant to show cause why the claim of the participant should not be resolved against the participant as a result of the improper conduct.

(xiii) The arbitrator will make the award within 30 days after the close of the hearing or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless the participants and the arbitrator agree to some other time limit.

(9)(i) The award in an oil pipeline rate arbitration proceeding will include a brief, informal discussion of the factual and legal basis for the award.

(ii) The prevailing participants must file the award with the Commission, along with proof of service on all participants.

(iii) The award in an arbitration proceeding will become final 30 days after it is filed, unless the award is vacated. The Commission, upon motion or otherwise, may extend the 30-day period for one additional 30-day period by issuing a notice of the extension before the end of the first 30-day period.

(iv) A final award is binding on the participants to the arbitration proceeding, and may be enforced pursuant to the Arbitration Act (9 U.S.C. 9–13). No action brought to enforce an award will be dismissed nor will relief be denied on the grounds that the matter is against the United States or that the United States is an indispensable party.

(v) An award may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. The award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding or in any other arbitration proceeding.

(10)(i) Within 10 days after the award is filed, any person may file a request with the Commission to vacate an arbitration award and must serve the request to vacate on all participants. Responses to such a request are due 10 days after the request is filed.

(ii) Upon request or otherwise, the Commission may vacate any award issued under this rule before the award becomes final by issuing an order to that effect, in which case the award will be null and void.

(iii) § 385.2202 of this chapter regarding separation of functions applies with respect to a decision to vacate an arbitration award.

(iv) If the Commission vacates an award, a party to the arbitration may, within 30 days of the action, petition the Commission for an award of attorney fees and expenses incurred in connection with the arbitration proceeding. The Commission will award the petitioning party those fees and expenses that would not have been incurred in the absence of the arbitration proceeding, unless the Commission finds that special circumstances make the award unjust.

(v) An arbitration award vacated under this paragraph will not be admissible in any proceeding relating to the issues in controversy with respect to which the award was made.

(vi) A decision by the Commission to vacate an arbitration award is not subject to rehearing or judicial review.

PART 375—THE COMMISSION

2. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–828r, 791a note, 2601–2645; 42 U.S.C. 7107–7532.

3. In § 375.303, the introductory text and paragraphs (c) and (d)(1) are revised to read as follows:

§ 375.303 Delegation to the Chief Accountant.

The Commission authorizes the Chief Accountant or the Chief Accountant's designee to:

* * * * *

(C) Pass upon applications to increase the size, add to or combine property units of public utilities, licensees, natural gas companies and oil pipeline companies.

(d) * * *

(1) Relating to Annual Report Nos. 1, 1F, 2, 2A, and 6, and,

* * * * *

§ 375.306 [Removed]

4. Section 375.306 is removed and reserved.

5. In § 375.307, the introductory text is revised and paragraph (g) is added to read as follows:

§ 375.307 Delegation to the Director of the Office of Pipeline and Producer Regulation.

The Commission authorizes the Director or the Director's designee to:

* * * * *

(g) Take the following actions relating to the regulation of oil pipelines under the Interstate Commerce Act:

(1) grant or deny petitions for waiver of annual charges;

(2) accept any uncontested item which has been filed consistent with Commission regulations and policy;

(3) reject any filing which patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted; and

(4) refer any matter to the Commission which the Director believes should be acted upon by the Commission.

Appendix A—Commission Opinion No. 154–B Rate Base Calculation

Note.—This appendix will not appear in the Code of Federal Regulations.

This schedule is for ratemaking purposes only. The 1983 "Cost of Reproduction New" is directly from the Carrier's 1983 Valuation Docket for that year.[1] Complete a separate schedule for each system.

Name of system:

Item	1983	1993[2]
Plant:		
1 Cost of Reproduction New[1].		
2 Land.		
3 Rights of Way.		
4 AFUDC	N/A	
5 Additions at Cost	N/A	
6 Total plant.		
Accrued Depreciation:		
7 Plant in Service.		
8 Rights of Way.		
9 AFUDC	N/A	
10 Retirements	N/A	
11 Total depreciation.		
12 Accumulated Deferred Income Taxes.		
Working capital:		
13 Material and Supplies.		
14 Prepayments.		
15 Oil Inventory.		
16 Total working capital.		
17 Accrued Deferred Income.	N/A	
18 Amortization of Starting Rate Base Write-Up.	N/A	
19 Total Equity Rate Base (L6–L11–L12 + L16+L17–L18.		
20 Parent Company Equity Capitalization.	N/A	
21 Equity Rate Base (L19 x L20).	N/A	

[1] Applicable only to pipelines in existence before January 1, 1984.

[2] This calculation sheet is for one year only (1993). It is intended only as a sample to demonstrate the form. It may be necessary to calculate each intervening year between 1983 and the current year to derive the current years' figures. If calculations have previously been filed for intervening years, only those years beginning with the last filing to the current year need be shown.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4678–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Pesticide Lab (Yakima) from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Pesticide Lab (Yakima) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology (Ecology) have determined that response actions have been carried out under the Resource Conservation and Recovery Act (RCRA), that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before August 12, 1993.

ADDRESSES: Comments may be mailed to: Sean Sheldrake, Environmental Protection Agency, 1200 6th Avenue, Mail Stop: HW–113, Seattle, Washington 98101.

Comprehensive information on this Site is available through the Region 10 public docket which is available for viewing at the Yakima Site information repositories at the following locations:

Washington Department of Ecology, Central Regional Office, attn. John Jones, 106 South 6th Avenue, Yakima, Washington 98902.

United States Environmental Protection Agency, Region 10 Hazardous Waste Division—Records Center, attn: Lynn Williams, 1200 6th Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Sean Sheldrake, U.S. EPA Region 10, 1200 6th Avenue, Mail Stop: HW–113, Seattle, Washington 98101, (206) 553–1220.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA) Region 10 announces its intent to delete a site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR part 300, and requests comments on this deletion. EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. EPA has the discretion to use its authorities under CERCLA or RCRA, or to designate a state with remedial authorities to accomplish appropriate cleanup at sites listed on the NPL. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

EPA plans to delete the Pesticide Lab (Yakima) Site at 3706 West Nob Hill Boulevard, Yakima, Washington 98902 from the NPL.

EPA will accept comments on this Site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV

discusses the Pesticide Lab (Yakima) Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP, 40 CFR 300.425(e), provides that releases may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate, or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this Site, where hazardous substances are not above health based levels and future access does not require restriction, operation and maintenance activities and five-year reviews will not be conducted. However, if new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) A notice was published in the local newspapers and distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day public comment period on EPA's clean closure determination under RCRA and the proposed No Further Action decision under CERCLA (no public comments were received in opposition to EPA's findings); (2) EPA Region 10 believes that the remedial investigation showed that the releases at the Site pose no significant threat to public health or the environment and, therefore, EPA issued a No Further Action Record of Decision (ROD) after the public comment period ended; (3) Ecology has concurred with the ROD and the proposed deletion decision; and (4) all relevant documents have been made available for public review in the local Site information repositories.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. As mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. The Agency will prepare a Responsiveness Summary where significant public comments are addressed.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

A. Site Characteristics

The Site listed on the NPL as the Pesticide Lab (Yakima) Site is located within the Yakima Agricultural Research Laboratory (YARL) in the city of Yakima, Yakima County, Washington. Approximately 50,000 people are located in Yakima. The Research Laboratory consists of numerous office and laboratory research buildings, warehouses, storage sheds, maintenance buildings and greenhouse/hothouse buildings occupying approximately 15% of an approximately 10 acre parcel in Yakima. The remaining acreage is used for cultivation of row crops and fruit trees. YARL is situated in a residential area within one-half mile of three schools, two hospitals and three shopping centers. The Site consists of a septic tank, disposal pipe, washdown pad and drainfield system used for the disposal of dilute pesticide compounds used at the YARL.

B. History

The research laboratory, originally an orchard, has been in operation since 1961. The primary activity at the laboratory involves the development of insect control technologies that benefit fruit and vegetable agriculture in the Pacific Northwest. Records indicate that the area was sprayed with various pesticide compounds including persistent chlorinated hydrocarbon pesticides such as DDT, Dieldrin, and Lindane. Workers at the laboratory used a modified septic and drainfield system to discharge dilute waste pesticide compounds. The system consisted of a 300 gallon concrete septic tank which drained a conventional toilet/sink and an outside concrete surface washdown pad. Tank effluent was discharged through a tile drain connected to a sink in a storage shed. Approximately 5,000 gallons of rinsate from equipment cleaning operations and less than 250 gallons of residual pesticide solutions were discharged into the system annually for about 20 years (from 1965 to 1985). Diluted pesticides known to have been introduced into the system with wastewater include but are not limited to Guthion, Sevin, Malathion, Parathion, Tetraethylpyrophosphate (TEPP), DDT, Temik, Methoxychlor, Kelthane, Lindane, Captan, Cyprez and Benelate. Heavy metals, including lead arsenate, and pesticide concentrates were never discharged to the septic tank/drainfield system. The unpermitted discharges resulted in investigations under RCRA and CERCLA at the YARL facility. There were concerns that pesticides and solvents had leached into the uppermost, shallow, drinking-water aquifer because of the presence of highly permeable sands and gravels.

YARL submitted a RCRA part A permit application in September 1980 and received interim status. A preliminary assessment and site investigation (PA/SI) was conducted in June 1982. Field work for the PA/SI was limited to shallow soil sampling and a failed attempt to drill to groundwater. The PA/SI concluded that soil was contaminated due to discharges from the septic system and that groundwater contamination was likely, based on an assumed groundwater depth of 20 feet. (Later the correct depth was determined to be 35 feet). Based on the results of the PA/SI, the Site was proposed for the NPL in December 1982 and finalized on September 8, 1983 (48 FR 40658). The Site is currently on the NPL, based on the original 1982 Hazard Ranking Score of 29.33.

On June 2, 1988, a RCRA Facility Assessment (RFA) was completed which included a preliminary characterization of the conditions at the Site, identified additional work needed to fully characterize the Site, and

described the results from a visual inspection. The RFA assessed exposure pathways that may be of concern given the nature of the releases at the Site and the substances released. Preliminary on-site sampling identified pesticides in septic tank water and the surrounding subsurface soil. The report concluded that the extent of groundwater and soil contamination could not be assessed without more information.

C. Characterization of Risk

Prior to remediation, the preliminary environmental pathways of concern related to the hazardous waste disposal system were groundwater, on-site soils and possibly surface water.

In 1988, YARL removed the drainfield, sampled soil within and outside the excavated drainfield area, sampled and gathered additional groundwater monitoring and sampling information from four monitoring wells and performed in-situ aquifer testing. Sampling was conducted for a lengthy list of primary and indicator parameters developed to determine groundwater quality and to monitor for the presence of the compounds believed to have been discharged through the septic tank/drainfield system.

The results of the study indicated that the groundwater was generally uncontaminated and that the likelihood for groundwater contamination, as a result of the hazardous waste disposal activities, was very low at the Site. The study detected a variety of hazardous pesticides and carrier solvents in the tank sludge and drainfield. Based on these data, EPA decided that the Site was subject to the requirements for hazardous waste treatment, storage, and disposal (TSD) facilities, under RCRA.

D. Remedial Action Selected and Implemented Under RCRA

Based on the hazard ranking score and the initial groundwater data, clean closure pursuant to RCRA requirements for interim status facilities (40 CFR part 265) was undertaken instead of initiating either a subpart B application under RCRA or conducting a Remedial Investigation and Feasibility Study pursuant to CERCLA. This approach is consistent with Ecology's Model Toxics Control Act Cleanup Regulations.

An initial closure plan ("cleanup plan") for the septic tank and drainfield, including a monitoring plan for sampling and analyzing groundwater and soil, had been submitted by YARL to EPA in January 1985. Four groundwater monitoring wells were installed in April 1988 at the Site. With site risks further characterized, a final revised closure plan was submitted on September 12, 1989 for approval. The September 12, 1989 final draft Closure Plan was released for public comment in December 1989. No comments were received. The Closure Plan was approved on January 30, 1990. As required by the approved Closure Plan, three additional wells were drilled and completed by July 1990.

The principal elements of the Closure Plan focused on removing the potential sources of contamination through removal and disposal of the septic tank contents, excavation and removal of the septic tank itself, washdown pad removal, additional background soil sampling, excavation and removal of contaminated soil to obtain cleanup levels, confirmational soil sampling around the removed structures, installation of groundwater monitoring wells and one year of groundwater sampling. Calculation of cleanup levels for contaminants at this Site were based on EPA's proposed RCRA subpart S standards as described in 55 FR 30798, July 27, 1990. Where cleanup levels for specific contaminants were not identified, consistent with subpart S, the Agency approved cleanup levels based on a cumulative noncarcinogenic risk estimate of less than 1.0 assuming daily intake and a lifetime incremental cancer risk of less than one in a million (within EPA's and Ecology's acceptable risk range for carcinogens).

Approximately 40 cubic yards of contaminated soil containing pesticides above the cleanup levels were removed from the former tank/pad area and disposed of at a permitted hazardous waste TSD facility. Two background samples taken during the initial closure phase (tank/pad removal) show low parts-per-billion levels of pesticide residuals such as Dieldrin and DDT. These and similar substances are expected to be found in this area due to historical, legal application of pesticides totally unrelated to the former YARL septic disposal practices.

Confirmational analysis of samples of remaining soil has not detected significant concentrations of PCBs, volatile organics semi-volatile organics or metals. Organophosphorus pesticides, identified in the tank contents, were not present in significant quantities in Site soils. Final confirmational soil sampling indicated that average DDT and Dieldrin concentrations were below cleanup levels, Endrin and Endosulfan were several orders of magnitude (100 to 1000 times) below cleanup levels, and other organochlorine pesticides were not detected.

Analytical data based on quarterly monitoring (45 valid samples in 5 quarters) indicate groundwater concentrations of DDT, Dieldrin and other regulated pesticides did not exceed health-based criteria or cleanup levels. No organic compounds were detected. Minor quantities of metals, including mercury, vanadium, and zinc, were detected below the maximum contaminant levels (MCLs) for drinking water.

Confirmational monitoring of soil and groundwater demonstrate that no significant risk to public health or the environment is posed by residual materials remaining at the Site and operation and maintenance activities are not required at the Site. Based on the removal of contaminated equipment and excavation of contaminated soil, EPA and Ecology believe that hazardous substances have been removed from the Site so as to allow for unlimited use and unrestricted exposure within the Site, that the Site is protective of public health and the environment and no further remedial action is needed at the Site. Accordingly, EPA will not conduct "five-year reviews" at this Site.

No environmental risk has been identified for this Site. For example, no critical habitats or endangered species or habitats of endangered species have been identified for this Site.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if the "remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate." EPA, with concurrence of Ecology, believes that this criterion for deletion has been met. The abbreviated Remedial Investigation and Record of Decision for the Site conclude that there is no significant threat to public health or the environment and therefore no further remedial action is necessary. Therefore, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the docket.

Dated: June 2, 1993.

Gerald A. Emison,

Acting Regional Administrator, Region 10.

[FR Doc. 93–16544 Filed 7–12–93; 8:45 am]

BILLING CODE 6560-60-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-201; RM-8213, RM-8252]

Radio Broadcasting Services; Walla Walla and Waitsburg, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on two mutually exclusive rule making petitions. The first was filed by Walla Walla Christian Boardcasters proposing the allotment of Channels 256A and 270A at Walla Walla, Washington, as the community's fifth and sixth local commercial FM transmission services. The second was filed by Brett E. Miller proposing the allotment of Channel 270C3 at Waitsburg, Washington, as its first local aural transmission service. See Supplementary Information *infra*.

DATES: Comments must be filed on or before August 30, 1993, and reply comments on or before September 14, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: John F. Garziglia, Esq., Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006 (Counsel for Walla Walla Christian Broadcasters); and Brett E. Miller, 11608 Blossomwood Court, Moorpark, California 93021 (Petitioner for Waitsburg, WA).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-201, adopted June 24, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Channels 256A and 270A can be allotted to Walla Walla in compliance with the Commission's minimum distance separation requirements at the same reference coordinates without the imposition of a site restriction. The coordinates for Channels 256A and 270A at Walla Walla are North Latitude 46-04-12 and West Longitude 118-19-48. Channel 270C3 can be allotted to Waitsburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.2 kilometers (1.4 miles) southwest to avoid a short-spacing to Station KTSL, Channel 270C3, Medical Lake, Washington. The coordinates for Channel 270C3 at Waitsburg are North Latitude 46-15-10 and 118-09-56. Since Waitsburg is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been requested.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-16579 Filed 7-12-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-182, RM-8269]

Radio Broadcasting Services; Columbiana, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Columbiana Broadcasting Company, requesting the allotment of FM Channel 268A to Columbiana, Alabama, as that community's first local aural transmission service. Coordinates used for this proposal are 33-10-04 and 86-38-45.

DATES: Comments must be filed on or before August 30, 1993, and reply comments on or before September 14, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Jr., Esq., 13809 Black Meadow Road, Greenwood Plantation, Spotsylvania, VA 22553.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-182, adopted June 18, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-16580 Filed 7-12-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-185, RM-8249]

Radio Broadcasting Services; Estes Park, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making

filed by Hambric Associates, seeking the allotment of Channel 271A to Estes Park, Colorado, as that community's first local FM service. Coordinates used for this proposal are 40–22–22 and 105–33–45.

DATES: Comments must be filed on or before August 30, 1993, and reply comments on or before September 14, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Hambric Associates, Attn.: M.R. Hambric, 10976 E. Crestline Place, Englewood, CO 80111.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–185, adopted June 18, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–16581 Filed 7–12–93; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1823 and 1852

Drug and Alcohol Testing of Contractor Employees

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA today publishes a proposed rule to implement the Civil Space Employee Testing Act of 1991 ("the Act"), which requires NASA contractors to institute and maintain a program for achieving a drug and alcohol-free workforce. Contractor programs shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees responsible for safety-sensitive, security, or National security functions for use, in violation of law or Federal regulation, of alcohol or a controlled substance.

DATES: Comments must be submitted in writing on or before September 13, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to David Sudduth, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, 300 E Street, SW., Washington, DC 20546. Comments regarding paperwork reduction, in addition to being forwarded to the designated Agency point of contact, may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Jonas Neihardt, Desk Officer for NASA, telephone (202) 395–4814, 3235 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Sudduth, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, (202) 358–0485.

SUPPLEMENTARY INFORMATION:

Background

NASA is publishing a proposed rule establishing NASA's policies and requirements regarding the development, implementation, and maintenance of a drug- and alcohol-free workplace by contractors and subcontractors performing work for NASA.

The Civil Space Employees Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619 ("the Act"), was signed into law by the President on December 8, 1991. The Act requires NASA to prescribe regulations within 18 months (June 9, 1993) that require testing of both NASA employees and NASA contractor employees conducting safety-sensitive, security, and National security functions for use, in violation of law or Federal regulation, of alcohol or a controlled substance. For purposes of this proposed rule, the term "controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined in regulations at 21 CFR 1308.11–1308.15. Consistent with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" ("HHS Guidelines"), published by the Department of Health and Human Services (53 FR 11970), and NASA's proposed regulations for testing of NASA employees in accordance with the Act, the contractor's drug testing program shall test for the use of marijuana and cocaine. NASA may, at some point, publish regulations requiring contractor testing programs to test for phencyclidines, amphetamines, and opiates, but such testing is not part of this rulemaking.

Section 21(g)(1) of the Act preempts inconsistent state and local laws.

The Act mandates, among other things, privacy in collection techniques, incorporation of the HHS Guidelines and comparable safeguards for alcohol testing, quantified confirmation of any initial positive result, collection of split samples of body fluid specimens, confidentiality of test results, and scientifically random selection of employees to be tested. The Act requires preemployment, random, post-accident, and reasonable suspicion testing; periodic recurring (follow-up) testing is discretionary. NASA has elected to make periodic recurring (follow-up) testing a component of NASA's testing requirements. The regulations require contractors to establish and maintain a rehabilitation program which, at a minimum, provides for the identification and opportunity for treatment of those covered employees in need of assistance in resolving problems due to misuse of alcohol or controlled substances.

The contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in any instance where a test conducted and confirmed under the contractor's program indicates that such employee has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance. Any covered contractor employee determined to have used, in violation of applicable law or

Federal regulation, alcohol or a controlled substance shall not be permitted to perform the duties which such employee performed prior to the date of such determination. The contractor's program shall further prohibit any employee from working in a sensitive position on a NASA contract, unless such employee has completed an appropriate program of rehabilitation and the contractor has obtained the approval of the NASA contracting officer.

The regulations shall apply to all NASA prime contracts and to any subcontract(s) where work is performed by an employee in a sensitive position.

The regulations require the contracting officer to comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to the failure to comply with these drug and alcohol testing requirements. The specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension are: (1) The contractor fails to institute and maintain a program for achieving a drug- and alcohol-free work force in accordance with the regulations; or (2) such a number of contractor employees having been convicted of violations of criminal drug statutes or substantive evidence of alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

NASA has established a "Mission Critical Space Systems Personnel Reliability Program." This program is designed to ensure that personnel assigned to mission-critical positions/duties relating to the Space Shuttle and other critical space systems, including Space Station Freedom, designated Expendable Launch Vehicles (ELV's), designated payloads, Shuttle Carrier Aircraft, and other designated resources that provide access to space, meet suitability screening requirements prior to unescorted access to areas where the Space Shuttle and/or any of the other systems are located. The Space Shuttle and other systems are "mission critical space systems." The regulations provide that any employees performing in positions designated as "mission critical" pursuant to the clause set forth in the NASA FAR Supplement at 18-52.246-70, "Mission Critical Space Systems Personnel Reliability Program" (if the clause is applicable to the subject contract), shall be subject to the drug and alcohol testing requirements.

At the time of enactment of the Act, NASA already had implemented a Drug-Free Workplace Program (DFWP) as mandated by Executive Order 12564, dated September 15, 1986, and section 503 of Public Law 100-71, dated July 11, 1987, to govern drug testing and address the use of illegal drugs by NASA employees.

The Act requires certain changes to the existing NASA drug testing rules for NASA employees (e.g., it requires split sample collections and preemployment testing regulations, neither of which are currently mandated by Executive Order 12664 or section 503 of Pub. L. 100-71), as well as regulations covering alcohol testing for NASA employees. NASA is separately publishing in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) amending 14 CFR part 1272, which includes the new drug testing (i.e., split sample collections and preemployment) and alcohol testing requirements for NASA employees.

Since the Act requires the same testing criteria for both NASA employees and covered NASA contractors, the contractor's testing program shall be consistent with the testing procedures for NASA employees being published in the NPRM amending 14 CFR part 1272.

Starting Date for Drug and Alcohol Testing of NASA Contractors

NASA requests comments on the amount of time that contractors will need, following contract award, to begin their drug and alcohol testing programs in order to meet the requirements of the proposed contract clause. Based on these comments, NASA will include in the final rule guidance to NASA contracting officers on the amount of time that is considered reasonable for implementing the required testing.

Procedural Requirements

Executive Order 12291

E.O. 12291, entitled "Federal Regulation," requires that regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. The Director, OMB, by memorandum dated December 14, 1984, exempted certain agency procurement regulations from E.O. 12291. The NPRM falls into one of the types of regulations exempted by OMB. Nevertheless, NASA submitted this proposed rule to OMB for review because of its relationship to the proposed testing requirements for NASA civilian employees.

Review Under the Regulatory Flexibility Act

The NPRM was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant impact on a substantial number of small entities. The NPRM reflects the minimum requirements to be fully compliant with the requirements of The Civil Space Employees Testing Act of 1991, Public Law 102-195, section 21, 105 Stat. 1616 to 1619. The NPRM establishes no agency discretionary regulations or requirements beyond the minimum requirements imposed upon the agency by statute that requires testing of both NASA employees and NASA contractor employees conducting safety-sensitive, security, and National security functions for use, in violation of law or Federal regulation, of alcohol or a controlled substance. Therefore, NASA certifies that the NPRM will not have a significant economic impact on a substantial number of small entities, beyond the requirements of the Act.

Review Under the Paperwork Reduction Act

NASA believes that minimal recordkeeping requirements are being imposed by the NPRM. NASA, therefore, will be requesting an OMB clearance for the NPRM under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Parts 1823 and 1852.

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1823 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Subpart 1823.5 is added to read as follows:

Subpart 1823.570—Drug- and Alcohol-Free Workforce

Subpart 1823.570 Drug- and Alcohol-Free Workforce

1823.570-1 Scope of subpart.

This subpart sets forth NASA requirements for mandatory drug and alcohol testing of certain contractor

personnel. This subpart implements section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; Civil Space Employee Testing Act of 1991, Public Law 102–195, section 21, 105 Stat. 1616 to 1619.

1823.570–2 Definitions.

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of this section.

Employee in a sensitive position means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence.

1823.570–3 Contract clause.

(a) The contracting officer shall insert the clause at 1852.223–74, "Drug- and Alcohol-Free Workforce," in all solicitations and contracts that require contractor employees to have access to classified information; perform in positions responsible for safety-sensitive, security, or National security functions in the performance of work under a Government contract; perform in positions designated "mission critical" pursuant to the "Mission Critical Space Systems Personnel Reliability Program" clause set forth at 1852.246–70; or when the contracting officer determines that the clause is necessary for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) The clause shall not apply to commercial or commercial type products as contemplated in FAR 11.001. The clause shall not apply to a contract, or to the part of a contract, that is performed outside of the United States and its territories and possessions. The clause shall not apply to any contract below the small purchase threshold as set forth in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

1823.570–4 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with NFS 1852.233–74, Drug- and Alcohol-Free Workforce.

(b) For purposes of NFS 1852.233–74, Drug- and Alcohol-Free Workforce, the specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are:

(1) The contractor fails to comply with the specific requirements of paragraphs (b), (c), (d) and (e) of the contract clause set forth at NFS 1852.233–74; or

(2) Such a number of contractor employees having been convicted of violations of criminal drug statutes or substantive evidence of alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.223–74 is added to read as follows:

1852.223–74 Drug- and alcohol-free workforce.

As prescribed in 1823.570–3, insert the following clause:

Drug- and alcohol-free workforce (xxxx 1993)

(a) *Definitions.* As used in this clause the terms *employee, controlled substance,* and *employee in a sensitive position,* are as defined in NFS 1823.570–2.

(b) The Contractor shall institute and maintain a program for achieving a drug- and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, and post-accident testing of contractor employees in sensitive positions for use, in violation of law or Federal regulation, of alcohol or a controlled substance. NASA Management Instruction (NMI) 3792.3B, "NASA Plan for a Drug-Free Workplace," dated December 17, 1991, in Appendix C of the NMI, sets forth guidelines that NASA follows in making determinations as to which of its employees are in sensitive positions. Contractors may follow these NASA guidelines in making determinations as to which of its employees performing on this contract are "employee(s) in a sensitive position," and are thus subject to the testing requirements of this clause. Any employees performing in positions designated as "mission critical" pursuant to the clause set forth at 1852.246–70, "Mission Critical Space Systems Personnel Reliability Program" (if the clause is applicable to this contract), shall be subject to the testing requirements of this clause. The Contractor's drug testing program shall test for the use of marijuana and cocaine. The Contractor's drug testing program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970), April 11, 1988, and the requirements set forth in 14 CFR part 1272, "Procedures for NASA Drug Testing and Alcohol Testing Programs."

(c) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in any instance where a test conducted and confirmed under the Contractor's program indicates that such employee has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(d) Any such employee determined to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance after the initiation of contract performance who engaged in such use while on duty; or prior to such use had undertaken or completed a rehabilitation program described in paragraph (e) of this clause; or following such determination, refuses to undertake such a rehabilitation program; or following such determination, fails to complete such a rehabilitation program, shall not be permitted to perform the duties which such individual performed prior to the date of such determination. The Contractor's program shall further prohibit any such employee from working in a sensitive position on a NASA contract, unless such employee has completed a program of rehabilitation described in paragraph (e) of this clause and the Contractor has obtained the approval of the Contracting Officer.

(e) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(f) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(g) This clause shall apply to the prime contract and to any subcontract where work is performed by an employee in a sensitive position.

(End of clause)

[FR Doc. 93–16182 Filed 7–12–93; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To List the Alaska Breeding Population of Dovekie as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the Alaska breeding population of the dovekie (*Alle alle*) to the List of Endangered and Threatened Wildlife. The Service finds the petition did not present substantial information indicating the requested action may be warranted. The Alaska breeding population of dovekies does not meet the definition of species under section 3(15) of the Endangered Species Act.

DATES: The finding announced in this notice was made on July 6, 1993. Comments and materials related to this petition finding may be submitted to the Field Office at the address listed below until further notice.

ADDRESSES: Information, comments, or questions concerning the Alaska dovekie petition may be submitted to the Field Supervisor, Anchorage Ecological Services Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, room G–62, Anchorage, Alaska 99501. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jean Cochrane, Endangered Species Specialist at the above address (telephone 907/271–2888).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be promptly published in the Federal Register. If the finding is positive, the Service is also required to promptly commence a status review of the species.

On March 29, 1993, Mr. Scott Felker submitted a letter to the Secretary of the Interior petitioning the Service to list the Alaska breeding population of dovekies as an endangered species pursuant to the Act. The petition was received on April 7, 1993. The petitioner describes dovekies in Alaska as endangered because of their very low numbers and great distance to the nearest breeding colonies.

This finding is based on various documents, including published and unpublished studies, agency documents, and literature syntheses. Researchers, wildlife managers, and local residents familiar with the species were interviewed. All documents on which this finding is based are on file in the Service's Ecological Services Field Office in Anchorage, Alaska.

Any species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act. The term "species" is defined by the Act to include "subspecies * * * and any distinct population segment of any species which interbreeds when mature" (16 U.S.C. 1532(16)).

Dovekies breed in the Palearctic at Greenland, Iceland, Russia, and, in Norway, at Jan Mayen Island, Bear Island and Spitsbergen (American Ornithologist's Union [A.O.U.] 1983). They probably breed on Bering Sea islands in Alaska and possibly in Canada (A.O.U. 1983, Smith 1973, Day et al. 1988). They winter in the North Atlantic and are seen infrequently south to Bermuda and the Mediterranean Sea (A.O.U. 1983). Dovekies are also seen infrequently along the Arctic coast of Alaska and Canada and in the interior of northeastern North America (A.O.U. 1983), and in southwestern Alaska (Kessel and Gibson 1978). Thus, the Service's primary objective was to determine whether the petition presented substantial information that indicated dovekies in Alaska meet the definition of species under section 3(15) of the Act.

The dovekie, a high-Arctic member of the alcidae or auk family of sea birds, breeds in greatest abundance at large colonies in Greenland. Evans (1984a) estimated the total population size for Greenland may be in the region of 8–25 million pairs. Farther east, a few pairs remain in colonies in Iceland, and in Norway, 50,000 pairs nest at Jan Mayen, 10,000 pairs at Bear Island, and 400,000–1.6 million pairs at Spitsbergen (Evans 1984b). In the Russian high Arctic, they nest at Novaya Zemlya (10–50,000 pairs), Franz Josef Island (250,000 pairs) and Severnaya Zemlya on the Laptev Sea (>75,000 pairs) (Golovkin 1984). Dovekies from Franz Josef Island and possibly Severnaya Zemlya are considered a distinct subspecies, *Alle alle polaris*, slightly larger than the more widespread *A. a. alle* (Stenhouse 1930, Vaurie 1965, Cramp 1984, all in Day et al. 1988).

Day et al. (1988) reviewed the distribution and subspecies of the dovekie in Alaska and summarized the following. No ornithologist has documented successful nesting in Alaska, but recent, repeated dovekie observations at auklet colonies on Little Diomede, King, St. Lawrence and St. Matthew islands suggest that dovekies are attempting to breed at these sites. The wintering area for Alaska dovekies is not known. The relative scarcity of dovekie sightings at sea in Alaska, despite thousands of hours of pelagic seabird surveys in the past 15 years, indicates how rare they are in Alaska (Day et al. 1988). Day et al. (1988) conclude that all 10 Alaska dovekie specimens they examined are the nominate race *A. a. alle*, rejecting the original identification of one St. Lawrence Island birds as *A. a. polaris* (Sealy et al. 1971).

While dovekies have not been documented breeding in Canada they are commonly sighted along the coast from Baffin Bay and Davis Strait to Hudson Bay, and rarely sighted westward to Banks and Victoria Islands, Northwest Territories and north to Melville and Ellesmere Islands (Smith 1973, Godfrey 1986). Smith (1973) reported that Native residents of western Victoria Island and Banks Island, Northwest Territories, have local names for dovekies, which they see almost every year.

The Service evaluated the petition's premise that dovekies in Alaska are a significant population segment distinct from abundant populations in Greenland, Norway and Russia. The petitioner states that "the fact that various Native groups [at Little Diomede and St. Lawrence islands] have given the dovekie Eskimo names indicates they must have once been more common than today." Further, since the presumed Alaska breeding sites are nearly 2,000 miles from the closest documented breeding colony, the petitioner states that neighboring populations would not be expected to naturally reestablish the Alaska population if it were extirpated.

All available published records, dating back to the first half of this century, indicate that dovekies have always been rare in Alaska. Gabrielson and Lincoln (1959) found only one record for the species in Alaska and Fay and Cade (1959) did not record dovekies at St. Lawrence Island. In the Alaska Seabird Management Plan, the Service estimated that only 10 dovekies breed in Alaska (U.S. Fish and Wildlife Service 1991), although the source of this estimate was not documented (V. Mendenhall, U.S. Fish and Wildlife Service, Anchorage, AK, pers. comm.).

R. Menadelook collected a dovekie specimen at Little Diomede Island in 1948 (Hanna 1961). He claimed the dovekie "is very rare on this island, its occurrence being in my estimation about one in 50,000 of other auklets"

(Hanna 1961:338). Holmes (1968:86) observed a dovekie at St. George Island in 1958 and was told at the time by local Natives that they "usually see a few every year." He concluded dovekies were uncommon inhabitants of the Bering Sea islands. And in 1965, Breckenridge (1966) was shown a captured dovekie on Little Diomede Island. Based on comments from Native hunters, Breckenridge (1966) concluded that a very small population of dovekies had been nesting on Little Diomede for some years.

Bedard (1966) spent eight months on St. Lawrence Island in 1965 and 1966 and saw five dovekies. He reported local Natives' claims that dovekies are present in small numbers year after year. Bedard presumed that dovekies spend the winter in the Bering Sea. "The only time for their reaching the Bering Sea is during their post-breeding dispersal in the early fall when several water routes are opened between their breeding grounds [in Greenland or Russia] and the Bering Strait. It is also apparent that this process must be repeated with some regularity in order to account for their continuous presence, at least in the St. Lawrence Island waters." In other words, Bedard thought dovekies are routinely dispersing in small numbers from their major breeding grounds to Alaska, where they apparently remain to nest occasionally. Bedard (1966) provides no evidence that dovekies were ever more abundant.

Finally, Sealy et al. (1971) reviewed the evidence for dovekies on St. Lawrence Island and concluded the species had arrived recently on the island. "Their small numbers and bi-racial characters [now identified as *A. a. alle*, but earlier confused with the similar *A. a. polaris*] indicate that these pioneers reached this area very recently. While some breeding colonies may have become established already on some of the islands, their numbers are probably augmented occasionally also by the arrival of new immigrants from the North Atlantic centers. Specimens have been taken in recent years along the potential dispersion routes by which these birds must pass to reach the Bering Sea; e.g., * * * Northwest Territories * * * Barrow, Alaska * * * and New Siberian Islands * * *" (Sealy et al. 1971:332).

Alaskan ornithologists consider dovekies peripheral, "invasive" or naturally rare in Alaska (personal communications with B. Kessel, D. Gibson and E. Murphy, University of Alaska, Fairbanks; A. Fowler, T. DeGange, V. Mendenhall and J. Piatt, U.S. Fish and Wildlife Service, Anchorage, AK; A. Sowls, U.S. Fish and Wildlife Service, Homer, AK; and R. Day, Alaska Biological Research, Fairbanks, AK). Native elders from Gambell, St. Lawrence Island, report that a few dovekies are seen locally and they nest on the local mountain (W. James, Sr., G. Koonoka, and C. Ungott, pers. comm.). None of the Gambell informants have noticed a decline in dovekies. Elders from Savoonga, St. Lawrence Island, report seeing "a few" dovekies locally and three informants have seen them nesting on the mountains near town (A. Akeya, A. Alowa, N. Alowa, F. Kingeekuk, Sr., E. Kogassagon, and E. Toolie, pers. comm.). Five of the Savoonga elders (ages 50–80 years) believe dovekies were more common in the past, but none have heard of dovekies being harvested. S. Steinaker (U.S. Bureau of Land Management, Fairbanks, AK, pers. comm.) interviewed residents at Little Diomede in 1985 and 1987, and was told that dovekies had always been rare there. Despite searching for dovekies, she saw only two. Dovekies are occasionally caught by Natives netting auklets for food at Little Diomede (A. Fowler and J. Piatt, U.S. Fish and Wildlife Service, Anchorage, AK and S. Steinaker, pers. comm.).

In summary, ornithologists and marine bird specialists uniformly classify Alaska dovekies as a peripheral immigrant to the Bering Sea from the species' enormous breeding colonies in Greenland and Russia. Based on available anecdotal information, summarized above, dovekies have been rare in Alaska since at least the 1940s. Due to their historical and present rarity, the Service concludes that dovekies in Alaska do not constitute a significant component of the species' overall population.

The Service finds that the data contained in the petition, referenced in the petition, and otherwise available to the Service do not present substantial scientific or commercial information indicating that the petitioned action may be warranted. Dovekies in Alaska do not meet the definition of a species or distinct population segment under section 3(15) of the Act. Hence, the Service finds that Alaska breeding dovekies should not be listed as endangered or threatened under the Act.

References Cited

A complete list of all the references cited herein, as well as others, is available upon request from the Anchorage Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this notice is Jean Fitts Cochrane (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1531–1544.

Dated: July 6, 1993.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–16518 Filed 7–12–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 132
Tuesday, July 13, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemptions of Bristow Cabin and Bristow Roadside Salvage Timber Sales From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber project to recover insect-killed timber is exempt from appeal under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic in the Bristow Creek drainage (Compartment 4) on the Fisher River Ranger District, Kootenai National Forest, has killed approximately 20 to 100 percent of the lodgepole pine within the analysis area. In February 1993, the Fisher River District Ranger proposed a salvage timber sale to recover damaged timber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Decision Memo and project file for the Bristow Cabin and Roadside Salvage Timber Sales, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of high-value, dead lodgepole pine that is suitable as house logs must be accomplished quickly to avoid further deterioration of the house logs. In addition, salvage of dead lodgepole pine must be accomplished quickly to avoid further deterioration of the timber, to minimize fire danger and to clear road surfaces and ditches to allow free movement of seasonal runoff and decrease erosion potential.

EFFECTIVE DATE: Effective on July 13, 1993.

FOR FURTHER INFORMATION CONTACT:

Lawrence Froberg, Fisher River District Ranger, Kootenai National Forest, 12557 HWY. 37, Libby, MT 59923. Telephone: 406–293–7773.

SUPPLEMENTARY INFORMATION: A mountain pine beetle epidemic occurred in the Bristow Creek drainage (Compartment 4) on the Fisher River Ranger District during the last several years. The project area is located within Management Areas (MA) 11, 12 and 15 as designated by the Kootenai Forest Plan (September 1987) as suitable timberland and big game winter/summer range. A small portion of the project area is located within MA 18 which has a goal to maintain existing vegetation until regeneration can be assured. This MA allows salvage harvest to prevent the spread of insects and disease to adjacent areas.

This proposal is designed to meet the following needs: (1) Clear road surfaces and ditches of dead lodgepole pine to enable road maintenance to be accomplished without barriers of down material, allow free movement of seasonal runoff and reduce erosion potential; (2) minimize fire danger, protect existing regenerated stands and allow access for fire suppression by reducing dead lodgepole pine fuel accumulations adjacent to system roads; (3) expedite the salvage of high-value house logs before these products are no longer merchantable or useable for house logs; and (4) contribute to a continuing supply of timber for industry by salvaging dead lodgepole pine before it deteriorates in value.

An interdisciplinary team was convened, and scoping began in February 1993. Two alternatives were analyzed, no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage approximately 730 thousand board feet from approximately 221 acres. Bristow Cabin Salvage consists of helicopter yarding of quality house logs on approximately 125 acres. Bristow Roadside Salvage consists of salvaging 96 acres of dead lodgepole pine along existing system roads through use of conventional tractor methods. The salvage area is accessible from existing roads.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to reduce the potential of wildfire and to recover merchantable house logs before they deteriorate and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Decision Memo and the project file for the Bristow Cabin and Roadside Salvage Timber Sales, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 7, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16514 Filed 7–12–93; 8:45 am]
BILLING CODE 3410–11–M

Exemption of 7990 Blowdown Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage and rehabilitation project designed to recover blown-down timber is exempt from provisions of 36 CFR part 217.

SUMMARY: In October 1991, usually strong winds in localized areas across the Rexford Ranger District of the Kootenai National Forest produced areas of wind-thrown timber. The Rexford District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through a Decision Memo and environmental analysis in the supporting project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber and reduce the risk of wildfire.

EFFECTIVE DATE: Effective on July 13, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon; Rexford District Ranger; Kootenai National Forest; 1299 Highway 93 North; Eureka, MT 59917. Telephone: 406–296–2536.

SUPPLEMENTARY INFORMATION: Severe windstorms on October 16, 1991, damaged approximately 22 acres of timber in the Briery Creek area. The wind-thrown timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, September 1987). In the winter of 1991, the Rexford District Ranger proposed to salvage wind-damaged timber in the Briery Creek area. This proposal is designed to meet the following needs: (1) Recover dead and dying timber before it loses its commercial value, (2) rehabilitate the affected timber stands, and (3) reduce the potential for wildfire by reducing fuel loading. An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action).

The selected alternative will salvage approximately 158 MBF of dead and damaged timber from approximately 22 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to reduce the fuel accumulations and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the 7990 Blowdown Salvage Decision Memo and project file, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 7, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16515 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Good Creek Blowdown Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a timber salvage and rehabilitation project designed to recover blown-down timber is exempt from provisions of 36 CFR part 217.

SUMMARY: On October 16, 1991, unusually strong winds in localized areas across the Rexford Ranger District of the Kootenai National Forest produced areas of wind-thrown timber. The Rexford District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through the Decision Memo and environmental analysis in the supporting project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber and reduce the risk of wildfire.

EFFECTIVE DATE: Effective on July 13, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon; Rexford District Ranger; Kootenai National Forest; 1299 HWY. 93 North; Eureka, MT 59917. Telephone: (406) 296–2536.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 25 acres of timber in the Good Creek area. The wind-thrown timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, September 1987). In the winter of 1991, the Rexford District Ranger proposed salvage of wind-damaged timber in the Good Creek area. The proposal is designed to meet the following needs: (1) Recover dead and dying timber before it loses its commercial value, (2) reduce the potential for wildfire by reducing fuel loading, and (3) rehabilitate the affected timber stands. An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action).

The selected alternative will salvage approximately 200,000 board feet of dead and damaged timber from approximately 25 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to reduce the fuel accumulations, and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the Good Creek Salvage Decision Memo and project file, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 7, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–16516 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–11–M

Hawaii Tropical Forest Recovery Task Force

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hawaii Tropical Forest Recovery Task Force will meet in Honolulu, Hawaii, July 30, 1993, 9 a.m., to 5 p.m. The Task Force is composed of 12 members, including the Administrator of the Department of Land and Natural Resources, State of Hawaii and eleven others appointed by the Governor of Hawaii and by the Secretaries of Agriculture and Interior. During this first organizational meeting, the members will review the legislative intent and background of the Task Force; elect a chairperson; and devise a 12-month process to develop recommendations to help better steward—manage, protect and use—the tropical forests of Hawaii through expanded assistance and research. This

first organizational meeting is open to observers from the public; however, participation is limited to Task Force members. Persons who wish to bring tropical forest recovery matters to the attention of the Task Force should file written statements with the Task Force before or after the meeting.

DATES: The meeting will be held July 30, 1993.

ADDRESSES: The meeting will be held at the Department of Land and Natural Resources, Chairman's Conference Room, 1151 Punchbowl St., room 130, Honolulu, Hawaii 96813. Send written comments to Michael Buck, Administrator, Division of Forestry and Wildlife, 1151 Punchbowl Street, Honolulu, HI 96813, (808) 587–0166; FAX: (808) 587–0160.

FOR FURTHER INFORMATION CONTACT: Jerilyn Levi, Office of the Deputy Chief for State and Private Forestry, (202) 205–1683.

Dated: July 7, 1993.

Michael T. Rains,

Acting Deputy Chief.

[FR Doc. 93–16524 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–11–M

Memorandum of Understanding With Animal and Plant Health Inspection Service on Animal Damage Management

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Forest Service gives notice of a Memorandum of Understanding (MOU) with the Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit. This Memorandum clarifies responsibilities of the respective agencies and commits them to fostering a partnership in discharging the Federal obligation under the Animal Damage Control Act of March 2, 1931 (7 U.S.C. 426–426b) in managing wild vertebrates causing damage on National Forest System lands.

The MOU recognizes the authority of APHIS and state agencies to conduct predator control activities on National Forest System lands. It further clarifies the role of each Forest Supervisor in cooperating with APHIS in completing necessary site-specific environmental analysis and documentation of actions proposed by APHIS and providing mitigation measures to ensure that animal damage management activities performed by APHIS are compatible with direction provided in forest plans.

EFFECTIVE DATE: This Memorandum of Understanding was signed on June 18, 1993, and remains in effect until superseded.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain single copies of the Memorandum of Understanding by writing or calling Tom Darden, Wildlife and Fisheries, USDA Forest Service, P.O. Box 96090, Washington, DC 20090–6090; (202) 205–1275.

Dated: July 7, 1993.

George M. Leonard,

Associate Chief.

[FR Doc. 93–16474 Filed 7–12–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held August 5, 1993, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda: General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of recent revisions to the Export Administration Regulations.
5. Discussion of preparation for COCOM List Review and Missile Technology Control Regime (MTCR) Annex Review.
6. Discussion of Nonproliferation Sanctions.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA/BXA, Room 1621, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 18, 1993, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call 202–482–2583.

Dated: July 6, 1993.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–16576 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–DT–M

Regulations and Procedures Technical Advisory Committee; Partially Closed Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held July 28, 1993, at 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis on implementation of the Export Administration Regulations (EARS), and provides for continuing review to update the EARS as needed.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Status report on working group projects.
4. Review of Regulatory Projects.
5. Election of new Chairman.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meetings date to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA/BXA Room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 18, 1993, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: July 6, 1993.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–16577 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–DT–M

Minority Business Development Agency

[Project I.D. No. 06–10–94001–01]

Business Development Center Applications: Shreveport MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds. An audit fee of $4,125 has been added to the Federal amount (Applicable only for non-CPA firms. CPA firms are audited by the Office of the Inspector General). The total funding breakdown is as follows: $169,125 Federal and $29,846 non-Federal for a total of $198,971. The period of performance will be from December 1, 1993 to November 30, 1994. The MBDC will operate in the Shreveport, Louisiana MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If the MBDC performs satisfactorily, it may continue to operate after the initial competitive year for up to 2 additional budget periods. An MBDC with year-to-date "commendable" and "excellent" performance ratings (28 consecutive months) may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal Laws and Department of Commerce policies, regulations, and procedures applicable to Federal assistance financial awards.

Consistent with OMB Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DOC are made.

Notification that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are currently facing criminal charges such as fraud, theft, perjury, or other matters

which significantly reflect on the applicant's managements honesty or financial integrity. Notification that if applicants incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered by Transactions and Lobbying".

CLOSING DATE: The closing date for applications is August 27, 1993. Applications must be postmarked on or before August 27, 1993.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75242.

FOR ADDITIONAL INFORMATION REGARDING THIS SOLICITATION: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75242, Attn: Bobby Jefferson, (214) 767–8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on August 6, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance. 11.800 Minority Business Development)

Dated: July 7, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–16506 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–21–M

[Project I.D. No. 06–10–94002–01]

Business Development Center Applications: McAllen MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $184,260 in Federal funds. An audit fee of $4,607 has been added to the Federal amount (Applicable only for non-CPA firms. CPA firms are audited by the Office of the Inspector General). The total funding breakdown is as follows: $188,867 Federal and $33,329 non-Federal for a total of $222,196. The period of performance will be from January 1, 1994 to December 31, 1994. The MBDC will operate in the McAllen, Texas MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If the MBDC performs satisfactorily, it may continue to operate after the initial competitive year for up to 2 additional budget periods. An MBDC with year-to-date "commendable" and "excellent" performance ratings (28 consecutive months) may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal Laws and Department of Commerce policies, regulations, and procedures applicable to Federal assistance financial awards.

Consistent with OMB Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DOC are made.

Notification that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are currently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's managements honesty or financial integrity. Notification that if applicants incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered by Transactions and Lobbying".

CLOSING DATE: The closing date for applications is August 27, 1993. Applications must be postmarked on or before August 27, 1993.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75242.

FOR ADDITIONAL INFORMATION REGARDING THIS SOLICITATION: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Bobby Jefferson, (214) 767–8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on August 9, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance 11.800 Minority Business Development)

Dated: July 7, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–16505 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[Docket No. 930529–3129]

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of solicitation of grant applications.

SUMMARY: Subject to the availability of Fiscal Year (FY) 1994 funds, NMFS issues this notice describing the conditions under which applications will be accepted under the Saltonstall-Kennedy (S–K) Grant Program and how NMFS will determine which applications it will fund. The S–K Grant Program assists persons in carrying out research and development projects that address aspects of U.S. fisheries involving the U.S. fishing industry (commercial or recreational) including, but not limited to, harvesting, processing, and associated infrastructures.

DATES: Applications must be received by September 13, 1993. No facsimile applications will be accepted.

ADDRESSES: Applications should be sent to any regional or Washington Office of the National Marine Fisheries Service. (For addresses, see section III.E.2. of SUPPLEMENTARY INFORMATION).

FOR FURTHER INFORMATION CONTACT: Richard H. Wheeler or Shirley V. Smith, S–K Program Office, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, Telephone (301) 713–2358.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Saltonstall-Kennedy (S–K) Act (15 U.S.C. 713c–3) makes available to the Secretary of Commerce (Secretary) up to 30 percent of the gross receipts collected under the customs laws from duties on fishery products. If appropriated, the Secretary may use a portion of these funds each year to make available grants to assist persons in carrying out research and development projects that address aspects of U.S. fisheries, including, but not limited to, harvesting, processing, and associated infrastructures. U.S. fisheries[1] include any fishery that is or may be engaged in by U.S. citizens or nationals, or citizens of the Northern Mariana Islands, the Republic of the Marshall Islands, Republic of Palau, and the Federated States of Micronesia. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

B. Funding

Subject to the availability of FY 1994 funds, NMFS issues this notice of solicitation of S–K grant applications, describing the conditions under which applications will be accepted under the S–K Grant Program and how NMFS will determine the applications it will fund. There is no guarantee that sufficient funds will be available to make awards

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish that are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Alaskan groundfish, Pacific whiting, New England whiting, Gulf of Mexico groundfish, etc.

for all approved proposals submitted in response to this notice of solicitation.

In the last three fiscal years, annual funding for the S–K Program has ranged from $1.0 million to $9.9 million.

II. Funding Priorities

Consistent with authorizing legislation, NOAA will emphasize the use of S–K funds appropriated by Congress for industry grants in the following manner. Priority areas and associated research and development activities that will be designated for funding will be those that are beyond the scope of any single entity to undertake without Government assistance because of one or more of the following: (1) There is a high degree of risk in achieving positive results; and (2) the potential benefits are too widely dispersed for any single entity to address with its own resources. Fisheries research and development project applications should relate to one or more of the priority areas in this section. Primary consideration for funding will be given to applications addressing the specific priorities. However, NMFS will also consider applications that address other significant industry problems or opportunities (note exceptions that follow).

Funding will not be provided for projects primarily involving infrastructure planning and construction, port and harbor development, and start-up or operational costs for business ventures.

NMFS has identified funding priorities in consultation with a wide cross-section of the U.S. commercial and recreational fishing industry, states, and Regional Fishery Management Councils.

If not adequately covered by proposals submitted in response to these priorities, NMFS will carry out a national program of research and development addressed to aspects of U.S. fisheries, as NMFS deems appropriate, pursuant to section 713c–3(d) of the S–K Act, as amended.

Applications addressing the priorities must build upon or take into account any past and current work in the area. Lists of ongoing and past studies, and more detail where necessary, are available from NMFS.

New applications must utilize and build upon relevant research in related fields. Applications proposing a continuation of S–K or other NOAA projects should fully describe how the work integrates past work with the proposed new work.

Consideration will be given to applications that address the following priorities, which are listed in no particular order.

A. Develop methods for eliminating or reducing the inadvertent capture or destruction of juvenile or sublegal-sized fish and shellfish, non-targeted species and/or protected species in commercial or recreational fishing operations. Studies may include the acquisition of information for managing bycatch issues or the technical development, demonstration, or evaluation of fishing gear or strategies. Projects primarily involving data collection should be directed at a specific problem or need and be of a fixed duration, not of a continuing nature. Examples of important problems are: Bycatch of species such as halibut, sablefish, reef fish, groundfish, finfish, billfish, bluefin tuna, undersized swordfish, striped bass, mackerels, shark, flounder, weakfish, spot, and croaker; mortality of released fish; incidental catch of turtles, sea lions, and other species in trawl gear; and killer whales, blue marlin and seabirds in fishing gear. The following areas of research have been identified, but are not all inclusive:

1. Determine optimal sampling strategies to estimate total catch and species composition by gear type and vessel size; evaluate whether current sampling strategies are adequate to estimate directed catch, bycatch, and discard with the accuracy required by fisheries managers. Investigation should include an evaluation of the adequacy of subsampling versus whole-haul sampling.

2. Develop cost-effective king, Tanner, or Dungeness crab pots that will reduce the capture of and the subsequent unnecessary handling mortality of sublegal sized crabs or female crabs.

3. Collect and analyze data describing mesh sizes currently utilized by the groundfish fleet in Washington, Oregon, and California.

4. Evaluate the effect of various leader strengths and hook types in reducing the bycatch mortality of bluefin tuna in the Gulf of Mexico fisheries.

5. Compare growth, physiology, condition, behavior, and reproductive success of marine mammals subjected to interaction with different regimes of commercial or recreational fishing.

B. Conduct biological, economic, social and other studies to improve fisheries management, including controlled access; resolution of user conflicts; impact of harvest gear types, area of capture, and season; and evaluation of competing gear groups on product type, quality, and market value. Projects primarily involving data collection should be directed at a specific problem or need, and be of a fixed duration, not of a continuing nature. The following research areas have been identified, but are not all inclusive.

1. Investigate potential implementation of limited entry schemes for the salmon, groundfish, reef fish, shark, tuna, and mackerel fisheries, including economic and social benefits/costs.

2. Analyze how Individual Quota systems have affected bycatch problems and the management effort needed for conservation of bycatch species.

3. Develop and test analytical tools to predict the effects of alternative management measures on total removals (landings and discards) from the West Coast groundfish fisheries.

4. Develop improved techniques for identifying individual stocks (subpopulations) of finfish to improve the ability of fisheries managers to direct fisheries away from protected species or untargeted stocks.

5. Develop and test improved survey instruments to collect social and economic data required to analyze various commercial fishery management alternatives.

6. Perform social and economic studies of fisheries of Washington, Oregon, and Northern California, including, but not limited to, surveys of harvest and processing costs and gross revenues; updated estimates of the net economic value of recreational fisheries; estimates of the demographic, type, amount, and opportunity cost of labor employed in fishing and fishery related business; estimates of the degree of fishermen's and communities' dependence on fishing income; estimates of demand, price flexibility, consumer surplus, and value-added processing and marketing channels and curves for important market categories. A related study might include an evaluation of the existing input-output West Coast Fisheries Economic Assessment Model to review the assumptions and appropriateness of the model given the increased emphasis on economics in allocation decisions since the model was originally developed.

7. Develop new and innovative methods to obtain independent assessments of groundfish species for which traditional approaches have not been effective. Studies could include application of hydroacoustic, sonar or video technologies to assess the distribution and abundance of species that inhabit rocky and rough topography, and aerial surveys of highly migratory species.

8. Develop innovative methods to determine time of migration, time of spawning, distribution of spawning

grounds, and size of spawning stocks of chinook salmon in remote, often turbid and braided, rivers and streams.

9. Evaluate the technical feasibility and cost of an ocean stock evaluation program for use in the management of mixed stock salmon fisheries on the West Coast.

10. Assess the social and economic dynamics and evaluate the impact of new entrants into the longline fisheries of the Western Pacific area.

11. Conduct research to qualitatively or quantitatively determine the social and economic values to the various constituencies of utilizing living marine resources in the exclusive economic zone surrounding Hawaii.

12. Analyze the social and economic effects on the shark and mackerel recreational fisheries of simple versus complex sets of bag limits, size limits, season, and area regulations.

13. Develop methods to differentiate unmanaged cultured species from the same species of wild stock. Research might include improving techniques of mass marking of hatchery-reared fish, focusing on mortalities resulting from tagging, effectiveness of tag in differentiating wild from hatchery fish, and cost and process required to tag hatchery fish.

14. Assess the genetic impacts, including disease resistance/susceptibility, resulting from the interaction between cultured salmon that escape from net pens and wild fish and/or between wild stocks of fish and cultured stocks that are intentionally released into the environment.

15. Develop consumer and recreational demand curves for snapper/grouper, red drum, and Spanish mackerel resources.

16. Develop and/or evaluate technological innovations for recordkeeping and reporting of commercial and recreational data for fisheries management, including, but not limited to, optical character recognition, pen-based bar code, satellite transmission, PC-based modem transmission, etc.

17. Improve assessments of commercially or recreationally important fish stocks that may be important forage for marine mammals.

C. Develop innovative approaches to achieving optimum use of living marine resources by the commercial and recreational fishing industry, and transferring effort from over-harvested to underutilized fisheries. Approaches may include new or improved harvesting/catching, handling, storing, and processing techniques (onboard and shoreside), new product development, market development, and, where necessary, collecting and summarizing basic biological and catch information. Projects primarily involving data collection should be directed at a specific problem or issue, and be of a fixed duration, not of a continuing nature. Particular attention should be given to arrowtooth flounder, spiny dogfish, skates, mackerels, herring, little tunny, pink and chum salmon, giant grenadier, freshwater clam (*Corbicula*), sardines, anchovy, squid, Dover sole, sanddabs, trochus, and artisanal fisheries. The following areas of research have been identified, but are not all inclusive:

1. Develop value-added products and markets for species that are not optimally utilized, e.g., dogfish, skates, mackerel, herring, pink and chum salmon, pelagic fishes, benthic invertebrates, incidentally caught long line species, and trochus flesh.

2. Create new economic opportunities through improved processing and expanded use of fish waste and conservation of waste water.

(a) Develop technology to produce commercially viable and environmentally sound byproducts from fish and seafood wastes generated by shoreside and floating processing facilities and net pen operations.

(b) Develop innovative, cost-effective technology to use/recycle or conserve fish processing and aquacultural waste water, and develop methods to meet new, more stringent effluent standards.

3. Develop harvest, shipping, and export market systems for the freshwater clam, *Corbicula*, in Japan and other countries.

4. Develop processes or techniques using fish, shellfish, marine algae, or byproducts, leading to innovative compounds or bioreactive agents with economic value to the fishing industry or the Nation as a whole. Examples of previous research of this type include the refinement of pearlescence from herring scales (used in synthetic pearls, iridescent paints, and the reflective backing of mirrors) and the isolation of the colloid carrageenan from marine algae, especially Irish moss (used as a stabilizer in paints and other emulsions, including ice cream).

5. Develop usable products from Tanner crabs and snow crabs suffering from bitter crab disease.

6. Study the nature and causes of withering syndrome disease of black abalone (*Haliotis cracherodii*) off the California coast.

7. Collect and summarize basic biological and catch information on the giant grenadier (*Albatrossia pectoralis*), a species caught incidentally in the Alaska groundfish trawl and longline fisheries.

D. Conduct research for domestication and mass culture of living freshwater and marine resources. The following areas of emphasis have been identified, but are not all inclusive:

1. Develop hatchery techniques for marine finfish species for both marine fisheries enhancement and commercial aquaculture. Such research could include: (a) Assessment of the physical, chemical and biological requirements of marine finfish enhancement and aquaculture, particularly as it applies to critical egg and larval stages of development; (b) efforts to refine captive broodstock technology, including emphasis on reproductive physiology, fitness of progeny for survival in the wild (including behavioral adaptations), and nutrition and health problems. Important species are halibut, cod, haddock, flounders, sea basses, red snapper, tautog, and tunas.

2. Conduct research to indicate the appropriate use of antibiotics in treating fish diseases. Research could include application methods (feeds, injection of brood stock), treatment regimens, efficacy in reducing disease, withdrawal and clearance times, and metabolic fate of the antibiotic.

3. Assess and demonstrate environmentally and economically sound use of offshore net pens to provide greater opportunities for expansion of the aquaculture industry.

4. Determine the technical and market feasibility of polyculture in salmonid net pen farming.

5. Develop methods for producing seed from Alaskan mollusks and Pacific oysters that will eventually lead to a source of low-cost and viable seed for Alaska's developing shellfish aquaculture industry.

6. Develop cultivation and marketing techniques for selected, high value species of fish, corals, and other invertebrates for use in the U.S. aquarium trade.

7. Define the basic biological parameters of growth, reproduction, and mortality of the black-lip pearl oyster found in the Western Pacific to allow improved pearl culture methods and better management of wild stocks.

8. Determine if satellite data used to determine coast-wide differences in wave energy can be useful in net-pen aquaculture operations concerning siting and mooring considerations.

E. Conduct studies on marine biotoxin fishery safety issues through the development and distribution of purified marine biotoxin standards; synthesis of derivatives to trace the accumulation of toxins in the foodweb;

development of new detection methods for toxin phytoplankton; determination of the role of environmental factors in toxin production; development of standard methods to prepare contaminated fish and indicator species for analysis, and standard disposal methods for biotoxin-containing catch. Particular areas of emphasis include, but are not limited to:

1. Develop standards (pharmacologic, analytical, and certified grades) for maitotoxin, ciguatoxin, and the different natural derivatives of saxitoxin. Perform stability studies on these standards and develop plan to provide standards to public and private research and monitoring programs.

2. Develop isotopic forms for the major classes of marine biotoxins suitable for pharmacokinetic studies of toxin uptake, metabolism, and depuration. Develop plan to provide isotopes to public and private research and monitoring programs.

3. Isolate the different toxic components from ciguatoxic fish and those produced by different strains of *Gambierdiscus toxicus*. Develop methods to determine their relative and differential toxicities.

4. Develop nucleic acid and (monoclonal) antibody probes specific for harmful algae species, including those producing marine biotoxins. Develop procedures for the use of these probes in the analysis of field and laboratory samples. Develop plan to provide probes to public and private research and monitoring programs.

5. Identify and characterize specific properties of harmful algae species and their ecology that are compatible with and can be incorporated into remote sensing algorithms for detecting and/or forecasting bloom events.

6. Develop standardized collection, preservation, and shipping and disposal procedures for biotoxin-contaminated shellfish, finfish, and phytoplankton samples. Particular emphasis should be placed on the fate and stability of marine biotoxins in natural seafood matrices of both commercially valuable and sentinel species.

7. Identify factors controlling the distribution of harmful phytoplankton species, e.g., paralytic shellfish poisoning or amnesiac shellfish poisoning using both existing and new hydrographic and experimental data.

8. Determine environmental conditions that enhance or control toxin production in diatoms producing domoic acid; conduct bioassays to determine if commercially important molluscan shellfish and Dungeness crab feed on these diatoms and become toxic; examine feeding habits of the shellfish to determine paths of domoic acid accumulation and retention/detoxification.

9. Determine the effects of various storage temperatures on generation of histamine in different scombroid fish, e.g., tuna, bluefish, dolphinfish and mackerel, and the relevance of current regulatory guidelines.

F. Conduct studies on the microbiological safety of fishery products by developing rapid methods of identification of bacteria and viruses, developing processes for their control, and determining the effect of various technologies and processes on product contamination and bacterial growth. Particular areas of emphasis include, but are not limited to the following:

1. Establish protocols, procedures, and techniques for restoration of molluscan shellfish harvesting areas closed due to bacterial pollution. Develop methods to monitor pollution sources, e.g., septic tanks, etc., which may contribute to the overall bacterial pollution load, and integrate with existing policies and procedures for managing shellfish harvesting waters.

2. Determine tissue distribution of Norwalk-like virus in shellfish.

3. Determine the possible effects of phosphates as inhibitors of salmonella and other harmful bacteria in shellfish.

G. Develop a nutrient composition data base, specific for the requirements of nutritional labeling, for the currently identified 20 most frequently consumed fish/shellfish specified in the final rule for Voluntary Labeling of Raw Fruit, Vegetables, and Fish, published at 56 FR 60880, November 27, 1991. Research should address details for quality evaluation of data produced within the past 5 to 10 years, determine additional analyses needed, and develop quality data to meet guidelines set forth by the Food and Drug Administration.

H. Conduct research in the area of habitat protection. The following needs have been identified, but are not all inclusive:

1. Develop and test environmentally sound and cost-effective methods for controlling species that have a deleterious impact on habitat, e.g., burrowing shrimp *Callianassa californensis* (ghost shrimp) and *Upogebia puttensis* (mud shrimp), which have destroyed intertidal areas and threaten oyster production. Such proposed methods must demonstrate that they have met the requirements of applicable Federal and state laws and regulations.

2. Evaluate the potential of using suction dredge mining and gravel mining as tools for restoring anadromous fish habitat in California streams.

3. Analyze the physical and economic impacts of bottom trawls on the ecosystem.

4. Analyze the physical and economic impacts of roller gear on reef habitat in the groundfish fishery.

I. Conduct biological and technological studies to enhance the management of threatened and endangered species of salmon in the western United States. Research could use unlisted species of salmon as models; however, results must be applicable to protected species. The following needs have been identified, but these are not all inclusive:

1. Determine the magnitude and effect of adult salmon mortality due to marine mammal predation on populations of protected species.

2. Develop and test new scientific methods for counting adult salmon escapement.

3. Develop and test genetic or other methods to differentiate among salmon runs.

4. Determine levels of toxic substances in estuaries and streams, and the associated sediments, and assess the impact of these toxic substances on salmon recruitment or survival.

5. Assess the tolerance of winter-run salmon eggs and fry to increases or fluctuations in temperature.

6. Determine the effects of the release of hatchery-raised fish on recruitment to wild populations.

J. Compare national and international regulatory agency methods of parasite detection and analysis with industry detection methodology and capabilities to establish a process to resolve existing differences regarding types, methodologies and tolerances currently in use for parasites.

K. Produce moisture level data for wild harvest and farm-raised shrimp and scallops, taking into account species, geographical, and handling variations, in order to establish baselines that may be used to measure the degree to which water weight is inappropriately added to the product through processing.

III. How To Apply

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries development projects may be made, in accordance with the procedures set forth in this notice, by:

1. Any individual who is a citizen or national of the United States;

2. Any individual who is a citizen of the Northern Mariana Islands (NMI),

being an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the constitution of the NMI;

3. Any individual who is a citizen of the Republic of the Marshall Islands, Republic of Palau, or the Federated States of Micronesia;

4. Any corporation, partnership, association, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 as amended (46 App. U.S.C. 802).[2]

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,

2. A negotiated repayment schedule is established and at least one payment is received, or

3. Other arrangements satisfactory to DOC are made. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. Successful applicants for S–K funding, at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable Office of Management and Budget (OMB) Circulars prior to execution of the award. Any first time applicant for Federal grant funds may be subject to a preaward accounting survey by the Department of Commerce prior to execution of the award. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001). NMFS encourages women and minority individuals and groups to submit applications. NOAA employees, including full, part-time, and intermittent personnel, (or their spouses or blood relatives who are members of their immediate households) and NOAA offices or centers are not eligible to submit an application under this solicitation or aid in the preparation of an application, except to provide necessary information or guidance about fisheries research and development and the priorities and procedures included in this solicitation.

B. Duration of Funding

Generally, grants or cooperative agreements will be awarded for a period of 1 year, but no more than 18 months, at a time.

If an application for an award is selected for funding, the Department of Commerce has no obligation to provide any additional prospective funding in connection with that award.

Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available.

C. Cost-Sharing

Although the S–K Act, as amended, does not require that applicants share in the total costs of a project, it is encouraged. Cost-sharing will not be a factor in the technical evaluation of an application. However, the degree of cost-sharing may be taken into account in the final selection of projects to be funded. If applicants choose to cost-share, and if their applications are selected for funding, those applicants will be bound by the percentage of cost-share reflected in the grant awards.

If project costs are shared, NMFS must provide at least 50 percent of total project costs, as provided by statute. The percentage of the total project costs provided from non-Federal sources may be up to 50 percent of the costs of the project. The non-Federal share may include funds received from private sources or from state or local governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds except as provided by Federal statute. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The total costs of a project consist of all costs incurred in the performance of project tasks, including the value of the in-kind contributions, to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of a grant or cooperative agreement between the applicant and an authorized representative of the United States Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are neither reimbursable nor recognizable as part of the recipient's cost share.

The appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, will be determined on the basis of guidance provided in the relevant OMB Circulars. In general, the value of in-kind services of property used to fulfill the applicant's cost share will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated. Appropriate documentation must exist to support in-kind services or property used to fulfill the applicant's cost share.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications must identify the specific priority(ies) to which they are responding. If an

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a state, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (i) The title of 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporations is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

application is not in response to a priority, it should be so stated. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application. Project applications must be clearly and completely submitted in the following format:

1. Cover Sheet: An applicant must use OMB Standard Form 424 (REV 4–88) as the cover sheet for each project. (In completing item 16 of Standard Form 424 (REV 4–88), see section V.A.9. of this notice.)

2. Project Summary: An applicant must complete NOAA Form 88–204 (10–92), Saltonstall-Kennedy Project Summary, for each project. Applicants may obtain copies of these forms from NMFS; addresses are listed under the "Application Submission and Deadline" section, which follows.

3. Project Budget: A budget must be submitted for each project, using NOAA Form 88–205 (10–92), which is available from NMFS, along with instructions for completion; addresses are listed under the "Application Submission and Deadline" section, which follows. The applicants must submit cost estimates showing total project costs. Cost-sharing is discretionary. If applicants choose to cost-share, both the Federal and non-Federal shares must be shown. No cost-sharing can come from another Federal source except as provided by Federal statute.

Applicant's matching costs are to be divided into cash and in-kind contributions. To support its budget, the applicant must describe briefly the basis for estimating the value of the matching funds derived from in-kind contributions. Estimates of the direct costs must be specified in the categories listed on NOAA Form 88–205. The budget may also include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal Government. Estimated indirect costs may be included pending approval of a negotiated Federal indirect cost rate. NOAA will assist prospective applicants in obtaining a negotiated Federal indirect cost rate, if deemed appropriate. Indirect costs shall not exceed direct costs. NOAA will not consider fees or profits as allowable costs for applicants.

4. Project Narrative Description: The project must be completely and accurately described. As a guideline, the project description may be up to 15 pages in length. NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS will not guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project must be described as follows:

a. Identification of Problem(s): For new projects, identify and completely describe the problem(s) the project addresses. As appropriate, in this description include: (1) The fisheries involved; (2) the specific problem(s) being addressed; (3) the sectors of the fishing industry that are affected; (4) the specific priorities to which the project responds; and (5) how the problem(s) prevent the fishing industry from developing a fishery or using existing fishery resources. If the application is for the continuation of an existing S–K funded project, describe in detail progress to date and explain why continued funding is necessary.

b. Project Goals and Objectives: State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above.

c. Need for Government Financial Assistance: Explain why members of the fishing industry or other entities cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

d. Participation by Persons or Groups Other Than the Applicant: Describe (1) the level of participation by NMFS, Sea Grant, or other Government and non-Government entities, particularly members of the fishing industry, required in the project(s); and (2) the nature of such participation. In addition, list names and addresses of the members of the fishing industry consulted during the preparation of the project description.

e. Federal, State, and Local Government Activities: List any existing Federal, state, or local government programs or activities which this project would affect, including activities under state Coastal Zone Management Plans and those requiring consultation with the Federal Government under the Endangered Species Act and the Marine Mammal Protection Act. Describe the relationship between the project and these plans or activities, and list names and addresses of persons providing this information.

f. Project Statement of Work: This section requires the applicant to prepare a detailed narrative fully describing the work to be performed that will achieve the previously articulated goals and objectives. A milestone chart that outlines major goals, supporting work activities, timeframe, and individuals responsible for various work activities must be included. The narrative should include information that responds to the following questions:

(1) How will the project be designed?

(2) What major products, (e.g., research, services, or reports) will result and what is their specific nature?

(3) What supporting activities (be as specific as possible) will be undertaken to produce major products?

(4) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting).

(5) What methodology will be used to evaluate final products or services, and how will it be integrated into the project?

The milestone chart should graphically illustrate:

(1) Steps to accomplish the major products, research, services and/or activities;

(2) Supporting activities and associated timelines, e.g., month 1, month 2, etc.; and

(3) The individual(s) responsible for the various activities.

Because this information is critical to understanding and reviewing the application, NMFS encourages applicants to provide sufficient detail. Applications lacking sufficient detail may be eliminated from further consideration.

g. Project Management: Describe how the project will be organized and managed. List all persons directly employed by the applicant who will be involved in the project, their qualifications, experience, and level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontracts, applicants, as appropriate, must follow procurement guidance in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A–110 for Institutions of Higher Education, Hospitals, and other Non-profit Organizations. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualification of the consultant and/or subcontractor and the process used for selection.

h. Project Impacts: Describe the anticipated impacts of the project in terms of landings, production, sales, improvement in product quality or safety, or other measurable factors. Describe how the results of the project will be made available to the public.

i. Evaluation of Project: The procedures for evaluating the relative success or failure of a project in

achieving its goals and objectives should be clearly delineated within each application.

5. Supporting Documentation: This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. The absence of adequate supporting documentation may cause reviewers to question assertion made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

E. Application Submission and Deadline

1. Deadline. NMFS will accept applications for funding under this program between July 13, 1993 and September 13, 1993. An application will be accepted if the application is received by any of the offices listed below on or before September 13, 1993.

2. Submission of Applications to NMFS. Applicants must submit one signed original and two copies of the complete application to any of the following addresses. No facsimile applications will be accepted.

Director, Office of Trade and Industry Services, National Marine Fisheries Service, 1335 East-West Highway, room 6204, Silver Spring, MD 20910, Telephone: (301) 713–2358.

Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, Telephone: (508) 281–9267.

Regional Director, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, FL 33702, Telephone: (813) 893–3142.

Regional Director, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213, Telephone: (310) 980–4033.

Regional Director, National Marine Fisheries Service, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115, Telephone: (206) 526–6150.

Regional Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or Federal Building Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99801, Telephone: (907) 586–7224.

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

1. Consultation with Interested Parties: NMFS will evaluate the project(s) contained in the application in consultation with representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and other fisheries interests, as necessary. NMFS will make project descriptions available in the following manner:

a. Public review and comment. Applications that are regional in nature may be inspected at the appropriate Regional Office. All applications will be available for inspection at the NMFS Office of Trade and Industry Services, 1335 East-West Highway, room 6204, Silver Spring, Maryland, from September 20, 1993 to October 4, 1993. Written comments will be accepted at a regional or the Silver Spring, Maryland, office until October 4, 1993.

b. Consultation with private individuals. NMFS shall, at its discretion, request comments from individuals outside of NMFS who have knowledge in the subject matter of a project or who would be affected by a project.

c. Consultation with Government agencies. Applications will be reviewed in consultation with NMFS Offices, NOAA Grants/Contracts Offices and, as appropriate, Department of Commerce and other Federal agencies. The Regional Fishery Management Councils will be asked to review applications that could impact a managed fishery, the bycatch of a managed fishery, or a fishery management issue.

2. Technical Evaluation: NMFS will solicit technical evaluations of each project application from appropriate private and public sector experts. All comments submitted to NMFS will be taken into consideration in the technical evaluation of applications. Point scores will be given to project applications based on the following evaluation criteria:

a. Problem Description and Conceptual Approach for Resolution. Both the applicant's comprehension of the problem(s) and the overall concept proposed to resolve the problem(s) will be evaluated. (25 points).

b. Soundness of Project Design/ Technical Approach. Evaluated will be whether or not the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and/or weaknesses of the technical design proposed for problem resolution. (25 points).

c. Project Management and Experience and Qualifications of Personnel. Evaluated will be the organization and management of the project, and the project's Principal Investigator and other personnel in terms of related experience and qualifications. Those projects that do not identify the Principal Investigator with his or her qualifications will receive a lower point score. (20 points).

d. Project Evaluation. Evaluated will be the effectiveness of the applicant's proposed methods to evaluate the project in terms of meeting its original goals and objectives. (10 points).

e. Project Costs. Evaluated will be the justification and allocation of the budget in terms of the work to be performed. Unreasonably high or low project costs will be taken into account. (20 points).

f. In addition to the above criteria, in reviewing applications for grants and cooperative agreements that include consultants and contracts, NOAA will make a determination regarding the following:

(1) Is the involvement of the primary applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

(2) Is the proposed allocation of the primary applicant's time reasonable and commensurate with the applicant's involvement in the project?

(3) Are the proposed costs for the primary applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

3. Panel Review: After the technical evaluation, comments will be solicited from a panel of representatives from the commercial and recreational fishing industry, state government, and others, as appropriate, to rank the projects. Considered in the rankings, along with the technical evaluation, will be the significance of the problem addressed in the project. The panelists will rank each project in terms of importance or need for funding and provide recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Project Funding

After projects have been evaluated, the reviewing NOAA Fisheries offices will develop recommendations for project funding. These recommendations will be submitted to the Assistant Administrator for Fisheries, NMFS, who will determine the number of projects to be funded.

The exact amount of funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA/NMFS program and grants management representatives. The Department of Commerce will review all recommended projects and funding before final authority is given to proceed on the project. The funding instrument will be determined by the NOAA Grants Management Division. Projects should not be initiated in expectation of Federal funding until a notice of award document is received. Any costs incurred prior to issuance of the award document are at the applicant's own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that the applicant may have received, there is no obligation on the part of the Department of Commerce to cover such costs. Generally, the time required to process applications is 120 days from the closing date of the solicitation.

V. Administrative Requirements

A. Obligation of the Applicant

An Applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

4. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller General of the United States, or their authorized representatives.

5. If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within 30 days after the end of each calendar quarter. These reports will be submitted to the individual specified as the NMFS Program Officer in the funding agreement.

6. If a project is awarded, submit an original and two copies of a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable NMFS to assess the success of the completed project. Formats for the quarterly and final reports, which have been approved by OMB, will be provided to the applicant.

7. In order for NMFS to assist the grantee in disseminating information, the grantee is requested to submit three copies of all publications (in addition to the Final Report in V.A.6. above) printed with grant funds to the NMFS Program Officer.

8. Primary Applicant Certification. All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." The following additional explanations are provided:

Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

Drug Free Workplace. Grantees (as defined at 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

Anti-Lobbying. Persons (as defined at 15 CFR part 26, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Anti-Lobbying Disclosure. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B;

Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Recipients and subrecipients of awards under this program shall be subject to all Federal laws and DOC regulations, policies, and procedures applicable to Federal assistance awards.

9. This program is covered by E.O. 12372. Any applicant submitting an application for funding is required to complete item 16 on Standard Form 424 (REV 4–88) regarding clearance by the State Point Of Contact (SPOC) established as a result of E.O. 12372. A list of State Points of Contact may be obtained from any of the NMFS offices listed in this notice.

B. Obligations of the National Marine Fisheries Service

NMFS will:

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects.

2. Provide advice, through the NMFS office servicing the applicant's area, to inform applicants of NMFS fisheries development policies and goals. Interested applicants are encouraged to contact the NMFS Silver Spring, Maryland, or Regional Offices for clarification or explanation of any information appearing in this notice.

3. Monitor all projects after award to ascertain their effectiveness in achieving their objectives. Actual accomplishments of a project will be compared with stated objectives.

4. Maintain a mailing list for the annual S–K solicitations. Upon request, interested persons will be placed on the mailing list to receive the solicitation at the time it is published in the **Federal Register**.

C. Responsibility of the NOAA Grants Management Division

The NOAA Grants Specialist, assigned by the NOAA Grants Management Division, is the individual designated to serve as the NOAA official responsible for the business management aspects of a particular grant or cooperative agreement. The Grants Specialist serves as the counterpart to the business officer of the recipient organization. The Grants Management Division is responsible for all business management matters associated with the review, negotiation, award, and administration of grants, and interprets grants administration, policies and provisions. Questions from the recipient relating to these aspects will be referred to the NOAA Grants Management Division. The official grant

file will be maintained by the Grants Management Division, which will ensure that OMB, DOC, and NOAA policies are met.

D. Legal Requirements

The applicant will be required to satisfy the requirements of applicable Federal, State and local laws.

Classification

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this notice is not a major action requiring a regulatory impact analysis under E.O. 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0135. Public reporting burden for preparation of the S–K application is estimated to be 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Richard Roberts, NOAA/IRMS, 6010 Executive Blvd., rm. 722, WSC–5, Rockville, MD 20852; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Project No. 0648–0135.

A notice of availability of financial assistance for fisheries research and development projects will also appear in the Commerce Business Daily.

(Federal Domestic Assistance Catalogue No. 11.427 Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements)

Dated: July 7, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries.

[FR Doc. 93–16475 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of permit (P545).

SUMMARY: On May 21, 1993, notice was published in the **Federal Register** (58 FR 29568) that an application had been filed by Dr. James R. Gilbert, Professor, Wildlife Department, University of Maine, Orono, ME 04469–5755, to conduct a population census on an unspecified number of harbor seals (*Phoca vitulina*) on coastal ledges in New England from Isle of Shoals north to the Canadian border using a fixed-wing aircraft.

Notice is hereby given that on July 6, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals, the NMFS issued a Permit for the above taking, subject to certain conditions set forth therein.

ADDRESSES: Documents submitted in connection with this Permit are available by writing to or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301–713–2289); and Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930 (508–281–9200).

Dated: July 6, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16517 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a Second Application for a Modification to Scientific Research Permit No. 818 (P211C).

Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has applied in due form for a Modification to Scientific Research Permit No. 818 to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR part 217–222).

Permit No. 818 was issued on April 22, 1993 (58 FR 25811) as authorized by the ESA. It authorizes ODFW to take listed adult and juvenile Snake River spring/summer chinook salmon (Oncorhynchus tshawytscha) for scientific research purposes through December 31, 1996.

ODFW is requesting authorization for the following research on listed Snake River spring/summer chinook salmon: (1) Capture and Passive Integrated Transponder (PIT) tag 4,000 parr and smolt chinook salmon that are progeny of Rapid River Hatchery stock that spawned naturally above the hatchery; (2) Potentially harass up to 350 adult chinook salmon while surveying spawning grounds to count redds and adults, and to recover carcasses; (3) capture and handle an additional 13,800 juveniles during surveys conducted in Lookingglass Creek to determine growth rates and distribution. ODFW estimates an indirect mortality of up to 170 juveniles and zero adults as a result of this research. ODFW requests this additional take annually for the duration of the permit, through December 31, 1996.

Written data or views, or requests for a public hearing on this modification application should be submitted to the Director, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this Modification application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above modification application are available for review by interested persons in the following offices: Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, Room 8268,

Silver Spring, Maryland 20910, (301–713–2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: July 7, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–16507 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Modification No. 1 to Scientific Research Permit No. 778 (P772#59)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

SUMMARY: On May 19, 1993, notice was published in the **Federal Register** (58 FR 29199) that a request for modification of scientific research Permit No. 778 had been submitted by the Southwest Fisheries Science Center, NMFS, La Jolla, CA 92038.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016); and,

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

SUPPLEMENTARY INFORMATION: Notice is hereby given that under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 361 *et seq.*), the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of section 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), Scientific Research Permit No. 778, issued on May 5, 1992 (57 FR 20250), has been modified to authorize the capture and instrumentation of an additional three animals, and to subsequently recapture them to retrieve the instruments. This modification becomes effective upon publication in the **Federal Register**.

Issuance of this Modification, as required by the Endangered Species Act of 1973, was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and, (3) is consistent with the purposes and policies set forth in section 2 of the Act.

Dated: July 5, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16508 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Scientific Research Permit (P538)

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

On April 28, 1993, notice was published in the **Federal Register** (58 FR 25812) that an application had been filed by Mr. Jan Ostman-Lind and Ms. Ania Driscoll-Lind, Kula Nai'a Wild Dolphin Research Foundation, Inc., P.O. Box 4044, Kailua-Kona, Hawaii 96745 for a permit to approach: up to 2300 spinner dolphins (*Stenella Longirostris*) up to 25 times each annually, up to 7000 spotted dolphins (*Stenella attenuata*) up to 50 times each annually, and up to 2000 bottlenose dolphins (*Tursiops truncatus*) up to 50 times each annually, over a 5-year period during the course of photo-identification studies in Hawaiian waters.

Notice is hereby given that on July 6, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), NMFS issued a permit to the above applicants to incidentally harass the species/numbers of marine mammal described above, subject to certain conditions set forth therein.

The permit and associated documents are available for review, by appointment, in the following offices:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90801–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, NOAA, 2570 Dole Street, Honolulu, HI 96822–2396 (808/955–8831).

Dated: July 6, 1993.

William Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16509 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Receipt of Application To Modify Permit No. 682 (P444)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

SUMMARY: Notice is hereby given that Dr. Phillip J. Clapham, Director, Population Studies, Center for Coastal Studies, 59 Commercial Street, Box 1036, Provincetown, MA 02657, has requested a modification of Permit No. 682 issued on October 19, 1989 (54 FR 43844), under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 682 authorizes the Permit Holder to harass up to 50 right whales incidental to photo-ID activities. The Permit Holder now seeks authorization to approach up to 100 right whales up to three times annually during the course of photo-ID activities.

ADDRESSES: Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and,

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16510 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–22–M

National Telecommunications and Information Administration

Reestablishment of the Spectrum Planning Advisory Committee

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of reestablishment of the Spectrum Planning Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. appendix 2 and General Services Administration (GSA) Interim Rule on Federal Advisory Committee Management, 41 CFR part 101–6, as amended, and after consultation with GSA, the Secretary of Commerce has determined that the reestablishment of the Spectrum Planning Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law. Effective June 30, 1993, the Spectrum Planning Advisory Committee has been reestablished as the Spectrum Planning and Policy Advisory Committee.

The Committee was first established on July 19, 1965 as the Frequency Management Advisory Council. It provided advice to the Director of the Office of Telecommunications Policy (OTP), Executive Office of the President, until the functions of that office were transferred to the Department of Commerce, National Telecommunications and Information Administration (NTIA), by Executive Order 12046 of March 27, 1978. In 1991, the committee name was changed to the Spectrum Planning Advisory Committee. Since the activities of the committee have extended into policy areas of concern, the advisory committee is being renamed the Spectrum Planning and Policy Advisory Committee. Its current charter terminated on April 24, 1993.

In reviewing the need for the Committee, the Assistant Secretary for Communications and Information has reaffirmed its original purpose of providing advice on radio frequency spectrum allocation and assignment matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Secretary has further affirmed the need for the Committee to advise on strategic spectrum planning issues and increased commercial access to Federal Government spectrum. Research indicates that the Committee's function cannot be accomplished by any organizational element of other committee of the Department.

The Committee membership consists of 19 members, including a balanced representation of 15 non-Federal members, and 4 Federal members, chaired by the Secretary of Commerce or an individual appointed by the Secretary. The Committee will operate in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's current Charter have been filed with appropriate committees of Congress and with the Library of Congress.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments may be addressed to the Executive Secretary, Spectrum Planning and Policy Advisory Committee, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, U.S. Department of Commerce, room 4090, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–4487; or Ms. Jan Witter, the Department Committee Management Analyst, U.S. Department of Commerce, room 6020, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–4115.

Dated: July 7, 1993.

Richard Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 93–16503 Filed 7–12–93; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Summer Study Task Force on Tactical Air Warfare

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Summer Study Task Force on Tactical Air Warfare will meet in closed session on July 20, 1993 at the Institute for Defense Analysis, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the nation's acquisition options for tactical air warfare over the next 10 to 10 years as force structure is drawn down. They should then recommend promising concepts and technologies to pursue that may have high leverage cost and effectiveness against foreseeable threats.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16478 Filed 7–12–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, August 3, 1993; Tuesday, August 10, 1993; Tuesday, August 17, 1993; Tuesday, August 24, 1993; and Tuesday, August 31, 1993, at 2 p.m. in Room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense

(5 U.S.C. 552b(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: July 7, 1993.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-16477 Filed 7-12-93; 8:45 am]

BILLING CODE 5000-04-M

Department of the Army

Notice of Open Meeting, Inland Waterways Users Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Correction to open meeting location.

This is the third change to the location of the Inland Waterways Users Board meeting scheduled for 27 July 1993. Disregard all other meeting locations. This change was directed by the U.S. Army Corps of Engineers, Directorate of Civil Works.

In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law 92-463, announcement is made of the following committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: 27 July 1993.

Place: Ramada Hotel—Old Town, 901 North Fairfax Street, Alexandria, VA 22314, Telephone: 703-683-6000.

Kenneth L. Denton,

Army Federal Register, Liaison Officer.

[FR Doc. 93-16631 Filed 7-12-93; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

[CFDA NO: 84.252]

Urban Community Service Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: This program provides grants to urban academic institutions to work with private and civic organizations to devise and implement solutions to pressing and severe problems in their urban communities. The program furthers National Education Goal 5, that every American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers the objectives of Goal 5 by affording students in urban academic institutions an opportunity to learn more about the problems in their communities and participate in developing solutions to these problems.

Eligible Applicants: Eligible applicants include any nonprofit municipal university, established by the governing body of the city in which it is located, and operating as of July 23, 1992. Also eligible is any institution of higher education or a consortium of institutions with at least one member that (1) is located in an urban area; (2) draws a substantial portion of its undergraduate students from the urban area in which it is located or from contiguous areas; (3) carries out programs to make postsecondary educational opportunities more accessible to residents of the urban area or contiguous areas; (4) has the present capacity to provide resources responsive to the needs and priorities of the urban area and contiguous areas; (5) offers a range of professional, technical, or graduate programs sufficient to sustain the capacity of the institution to provide these resources; and (6) has demonstrated and sustained a sense of responsibility to the urban area and contiguous areas and the people in those areas.

Deadline for Transmittal of Applications: August 12, 1993.

Deadline for Intergovernmental Review: October 13, 1993.

Applications Available: July 13, 1993.

Available Funds: $1,100,000.

Estimated Range of Awards: $200,000-$350,000.

Estimated Average Size of Awards: $220,000.

Estimated Number of Awards: 4 to 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to five annual budget periods.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) When published as final regulations, the Urban Community Service Program regulations in 34 CFR Part 636.

Priority: Under 34 CFR 75.105(c)(3) and 20 U.S.C. 1136b(b), the Secretary gives an absolute preference to applications that propose to conduct joint projects supported by other local, State, and Federal programs. The amount of funds to be reserved for this priority will be established after determining the number of high quality applications received.

Supplementary Information: On May 20, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 29373).

It is not the policy of the Department of Education to solicit applications before the publication of final regulations. However, in this case it is necessary to solicit applications on the basis of the NPRM in order to have sufficient time available to conduct the competition and make awards prior to the end of the fiscal year (September 30, 1993).

Summary of Anticipated Changes

Four comments were received in response to the Secretary's invitation to comment on the NPRM. In response to these comments, the Secretary anticipates making one change to the proposed regulations. All four commenters addressed the requirement in § 636.2(b)(2) that an applicant institution must draw "a substantial portion of its undergraduate students" from the urban area in which it is located, or from contiguous areas, to be eligible for a grant. The commenters believe that the definition of "substantial portion of its undergraduate students" in § 636.7(b) to mean 50 percent or more of the enrolled undergraduate student population establishes too high a threshold. The commenters contend that 50 percent is inappropriate since the statute did not require a "majority."

The Secretary agrees with the commenters and expects to change the definition of "substantial portion of its undergraduate students" in § 636.7(b) to mean 40 percent or more of the enrolled undergraduate student population.

Applicants should prepare their grant applications based on the provisions in the NPRM, as amended by the change to § 636.7(b) discussed in this summary of anticipated changes. If the Secretary makes any changes in the regulations that were not discussed in this notice, applicants will be given an opportunity to revise their applications.

For Applications or Information Contact: Patricia W. Gore, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3022, ROB-3, Washington, D.C. 20202-5251. Telephone: (202) 708-8849. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1136–1136h.

Dated: July 7, 1993.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 93–16529 Filed 7–12–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Floodplain and Wetlands Involvement for the Proposed Radioactive Soil Removal From the Project Chariot Site at Cape Thompson, Alaska Maritime National Wildlife Refuge, AK

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: DOE proposes to characterize and remediate affected soils contaminated in a 1962 radioactive tracer study conducted by its predecessor agency, the Atomic Energy Commission, located at the Project Chariot Site in Cape Thompson, Alaska, Maritime National Wildlife Refuge, Alaska. The proposed remedial action includes a program to: (1) Sample a disposal mound and all other areas potentially contaminated during the 1962 study to determine the present concentration of radioactive contaminants, (2) excavate and remove contaminated soils, (3) transport the excavated soils for disposal at a DOE low-level radioactive waste disposal site; either the Nevada Test Site or the Hanford Site in the State of Washington, (4) secure approval for final closure of the mound and test plots, and (5) revegetate the excavated site(s). Project activities would involve incidental crossing of the floodplain or wetlands of Ogotoruk and Snowbank Creeks in the conduct of remedial or site characterization activities. These same media would be sampled in the nearby Kisimilok Valley to aid in establishing regional background levels. In accordance with title 10 Code of Federal Regulations CFR part 1022, DOE is assessing the potential impacts to the floodplain and wetlands in the "Environmental Assessment of Proposed Radioactive Soil Removal from the Project Chariot Site at Cape Thompson." DOE will perform this proposed remedial action in a manner so as to avoid or minimize potential harm to or within the affected floodplains and wetlands.

DATES: DOE needs to begin the proposed action as soon as possible to ensure project completion before inclement seasonal weather makes further remedial action work impossible during 1993. In accordance with 10 CFR 1022.18(c), DOE waives the 15-day time periods for public review. DOE will consider comments received at the address below no later than July 28, 1993 to the extent practicable.

ADDRESSES: *For further information on this proposed action, contact:* Donald R. Elle, Director, Environmental Protection Division, Nevada Operations Office, U.S. Department of Energy, P.O. Box 98518, Las Vegas, NV 89193–8518, (702) 295–1146 FAX: (702) 295–0838.

For further information on general DOE floodplain/wetlands environmental review requirements, contact: Carol Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 427–2756.

SUPPLEMENTARY INFORMATION: The proposed project would involve site characterization activities on the Alaska Maritime National Wildlife Refuge near Cape Thompson, removal of contaminated soil, and revegetation of disturbed tundra along some trials left from the 1962 radioactive tracer study. The Project Chariot Site is located approximately 680 miles northwest of Anchorage, Alaska. The radioactive contaminants were introduced during a 1962 tracer study conducted by the Atomic Energy Commission. Following the study, all contaminated soil and other radioactively contaminated material were placed in a mound (approximately 6 feet high and 40 feet square) at the site. The proposed project would remove this mound from the Project Chariot Site to a DOE low-level waste site in Nevada or Washington. The project would involve crossing floodplains and wetlands along the Ogotoruk and Snowbank Creeks to obtain access to the mound or characterization sampling sites.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), DOE is assessing the impact of the floodplains and wetlands in the "Environmental Assessment of the Proposed Radioactive Soil Removal from the Project Chariot Site at Cape Thompson" being prepared in accordance with the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that is issued following the completion of the EA or may be issued separately.

Issued in Washington, DC, on July 8, 1993.

C.W. Frank,

Acting Principal Deputy Assistant Secretary, Environmental Restoration and Waste Management.

[FR Doc. 93–16574 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–01–M

Floodplain and Wetlands Involvement for Bridge Replacements of 603–71G and 603–72G (Road B Crossing Lower Three Runs Below PAR Pond Dam) and of 603–4G (Road 4 Crossing Fourmile Branch) Located on the Savannah River Site (SRS)

AGENCY: Department of Energy (DOE).

ACTION: Notice of Floodplain and wetlands involvement and solicitation of comments.

SUMMARY: Title 10, Code of Federal Regulations (CFR), part 1022, requires DOE to evaluate actions that may be taken in order to ensure consideration of protection of floodplains and wetlands in the decisionmaking process. As soon as practicable after a determination that a floodplain and/or wetland may be involved, the regulations require that a public notice be published in the **Federal Register**, including a description of the proposed action and its location.

DOE proposes to demolish three existing bridges 40–65 years old and to construct three new bridges conforming to current design and construction practices in a floodplain and wetland located in Aiken and Barnwell Counties, South Carolina. Discarded material will be disposed of in a sanitary landfill. In accordance with Title 10 CFR part 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Comments on the proposed actions are due on or before July 28, 1993.

ADDRESSES: Comments should be addressed to Floodplain/Wetlands Comments, Stephen R. Wright, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802. The phone number is (803) 725–3957. Fax comments to: (803) 725–7688.

FOR FURTHER INFORMATION ON DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S.

Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600 or (800) 472–2756.

A location map showing the project sites and further information can be obtained from the Savannah River Operations Office (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: Each of the bridges included in this replacement project was identified in a sitewide bridge inspection as no longer capable of supporting the transportation of heavy loads across the site. The replacements shall be similar in design and construction with some latitude for length of span and end abutment configuration. The method of demolition is also considered similar for each of the three bridges with varying lengths of span.

Demolition of a bridge will require cutting the deck at the span joints and hoisting the deck in sections off of the pier caps. The pier caps can then be separated from the timber piles or concrete piles and removed. Depending on the final location of the piers, the timber piles or the concrete piles may be cut below the water surface and abandoned in-place, limiting disturbance to the stream and reducing costs. If the timber piles interfere with the new piles, they will be pulled to prevent decay of the piles, leaving an unacceptable void near the proposed pile foundation.

The existing bridge geometry shall be maintained for each bridge as closely as possible. The width of the proposed bridges is 44–0 as compared with 24–0 on existing bridges.

To accommodate the increased width of the bridge, the end abutments will require enlarging and may require tie-back walls, depending on site topography, to prevent erosion of the embankment.

Bridges shall be designed using prestressed, precast concrete beams or cast-in-place posttensioned beam construction with a reinforced concrete deck and asphalt or concrete wearing surface. Guardrails and parapets walls shall meet a South Carolina Department of Highways and Public Transportation (SCDHPT) and American Association of State Highway Transportation Officials approved standard.

Bridges shall be supported by approximately four reinforced concrete piers at each pier cap. The piers shall be supported by driven piles. The location of piers for each bridge is determined by the span lengths for the structure. The project anticipates using SCDHPT standard span lengths for each bridge, the maximum of which is 40–0.

The increase of span length may require an increase of the distance between the end abutments. This increased distance may provide a larger surface area of stream flow once the replacement bridges have been completed.

During construction, portions of roadways shall be closed to traffic and detoured. This will provide greater flexibility to implement construction methods to minimize environmental impacts that would be impossible to use while maintaining through traffic.

Erosion control measures will be installed at all areas to prevent impacts from disturbances reaching wetlands or entering waterways. Staging of construction activities shall be planned to reduce increased traffic in the waterway resulting from construction and to maintain the limits of disturbance to as small an area as possible to perform the bridge construction. The bridge contractor will also be required to provide equipment, materials, and labor in the event of any spills or uncontrolled discharges of sediment.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR, part 1022), DOE will prepare a flooodplain and wetlands assessment for this proposed DOE action.

After DOE issues the assessment, a floodplain statement of findings will be published in the **Federal Register.**

Everet H. Beckner,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 93–16570 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–1

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the following sale: Contract No. S–EU–1013, for the sale of 5 grams of uranium, enriched to 98.64 percent in the isotope uranium-235 to the Instituto di Geocronologia, Pisa, Italy, of use in isotopic dilution analyses of uranium in rock and mineral samples.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 7, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–16572 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Civilian Radioactive Waste Management

Yucca Mountain Waste Package Development Workshop

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of workshop.

TIME AND DATE: 8 a.m.–5 p.m. on September 20–22; and 8 a.m.–12 noon on September 23, 1993.

PLACE: The Howard Johnson Plaza Suite—Hotel located at 4255 South Paradise Rd. in Las Vegas, Nevada 89109.

This workshop will be a followup to the Engineered Barrier System Workshop held in Denver in June 1991 and will consist of presentations, discussions by selected experts, and audience participation.

SUMMARY: In this notice, the Office of Civilian Radioactive Waste Management announces the Yucca Mountain Waste Package Workshop. The Department is seeking participants who may be interested in presenting Waste Package concepts or supporting information on materials selection, fabrication, closure, nondestructive evaluation, performance assessment, and testing at this workshop.

SUPPLEMENTARY INFORMATION: The focus of this workshop will be the disposal container and those aspects of disposal container development currently of concern to the Yucca Mountain Site Characterization Project Office. Topics will include containment barrier degradation, materials selection, container fabrication, closure and nondestructive evaluation techniques, and performance assessment with an emphasis on data/testing needed tc support modeling and performance

assessment. The objectives of the workshop will be to provide a forum to discuss ideas relative to these important aspects of disposal container development and to allow comment and input from all interested parties relative to the current status of waste package development as part of the site characterization process.

Presenters for the workshop will be selected on the basis of a Department of Energy evaluation of their qualifications and technical analysis of the proposed concept or approach. Interested presenters must submit a personal qualifications statement along with a technical analysis of the proposed concept they would like to address at the workshop. Concepts shall focus on the aspects of disposal container development previously specified. Those selected to present their concepts will receive an information package on the status of the Department of Energy waste package program.

Those interested in presenting at the workshop should submit their qualifications and proposals for consideration to the Department of Energy, by July 30, 1993. Send these to Diane J. Harrison, U.S. Department of Energy, Yucca Mountain Site Characterization Project Office, M/S 523, P.O. Box 98608, Las Vegas, NV 89193–8608.

CONTACT PERSON FOR MORE INFORMATION: For anyone wishing to attend this workshop a block of rooms has been reserved at the Howard Johnson Plaza Suite-Hotel. Please contact Linda Evans (702–794–7693) by Wednesday, August 18, 1993, for reservations (credit card required. Single Room is $69 including tax).

A tour of Yucca Mountain is planned for Monday, September 20, 1993, for which reservations are required. The number that can be accommodated may be limited. Those wanting to participate in this tour must contact Carleen Hill, Science Applications International Corporation, (702–794–7375) by August 27, 1993.

This invitation for participation should not be interpreted as a request for proposal for future work in this area or as a commitment to compensate participants in any manner.

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 93–16571 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Proposed Revision of NWPA–830R A–G, "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed revision of NWPA–830R A–G, "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste" and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision of NWPA–830R A–G, "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste."

DATES: Written comments must be submitted on or before August 12, 1993. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Jorge Luna-Camara, Energy Information Administration Survey Manager, EI–523, U.S. Department of Energy, Washington, DC 20585, (202) 254–5664.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORMS AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Jorge Luna-Camara at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. This program will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, technology, and related economic and statistical information relevant to the adequacy of energy resources to meet the Nation's economic and social needs in the near and longer term future.

The NWPA–830R A–G data are entered into the Department of Energy's accounting records. The data from electric utilities concerns payment of their contribution to the Nuclear Waste Fund, and contains specific data on disposal of nuclear waste.

II. Current Actions

In keeping with its mandated responsibilities, EIA proposes to extend for three years the information collection aspects of NWPA–830R A–G, "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste." The proposed changes to the NWPA–830G, Annex A to Appendix G, "Standard Remittance Advice for Payment of Fees," are summarized below:

(1) A line to allow utilities (when applicable) to deduct pump storage losses has been added;

(2) A line to allow the utilities to report the source of the information being reported (i.e., Form EIA 861, Form EIA 412, Form REA 12, and FERC Form 1) has been added; and the instructions have been clarified.

Changes to NWPA–830C, Appendix C "Delivery Commitment Schedule," are as follows:

(1) Section 1, Line 1.1—The "Name of Purchaser" was added, moving the DCS Identification Number to Line 1.2.

(2) Section 2:

(a) Line 2.2—"Shipping Lot Number" was deleted;

(b) Line 2.4—"Proposed Delivery Date" was replaced with Proposed Delivery Year;

(c) Line 2.5—"DOE Assigned Delivery Commitment Date" was deleted;

(d) Line 2.7—"Metric Tons Uranium" was deleted (Discharged);

(3) Section 4—"Notification of DOE Approval" was replaced with Notification of DOE Action;

(4) Line 4.1—"Approved by DOE" was replaced with Approved, Disapproved.

III. Request for Comments

Prospective respondents and other interested parties should comment on

the proposed extension and revisions. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 40 hours per respondent on NWPA–830–G and NWPA–830–A; and 5 hours of reporting burden on NWPA–830–C. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form(s)?

E. What is the estimated cost of completing this form(s), including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purpose would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

E. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the NWPA–830R A–G.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Statutory Authorities: Section 2(a) of the Paperwork Reduction Act of 1980 (Public Law 96–511), which amended chapter 35 of title 44 United States Code (44 U.S.C. 3506(a)).

Issued in Washington, DC, July 8, 1993.

Yvonne M. Bishop,

Director, Statistical Standards.

[FR Doc. 93–16573 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–739–000, et al.]

Entergy Services, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 6, 1993.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket No. ER93–739–000]

Take notice that on June 29, 1993, Entergy Services, Inc. (Entergy Services), on behalf of Louisiana Power & Light Company (LP&L), filed the Transmission Agreement between LP&L and Southwestern Electric Power Company (SWEPCO) (the "Agreement"). Entergy Services states that the purpose of the Agreement is to provide for the transmission and distribution of power and energy purchased by SWEPCO from Cajun Electric Power Cooperative, Inc. to the former delivery points of Bossier Rural Electric Membership Corporation (BREMCO), the assets of which are being acquired by SWEPCO. Entergy Services requests that the Agreement be made effective on July 1, 1993, the date that SWEPCO is to acquire BREMCO's assets.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Canal Electric Co.

[Docket No. ER93–745–000]

Take notice that on June 30, 1993, Canal Electric Company (Canal) filed four documents under section 205 of the Federal Power Act: (1) An Amendment to the Capacity Acquisition Agreement (Agreement) between itself and Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), which amends the terms of the Agreement (FERC Rate Schedule No. 21) with respect to the procurement of bulk electric power. Under the terms of the proposed Capacity Acquisition and Disposition Agreement (as the Agreement, which Agreement as amended was also filed, is to be hereinafter known), Canal may continue to procure bulk electric power at the request of and for resale to Commonwealth and/or Cambridge, but may also sell power owned or otherwise held by Commonwealth and Cambridge at the request of Commonwealth and/or Cambridge; (2) a Capacity Disposition Commitment between itself and Commonwealth, which implements the terms of the Capacity Acquisition and Disposition Agreement with respect to the assignment by Commonwealth to Canal of a portion of Commonwealth's entitlement in Canal Unit No. 2. Canal will sell a portion of Commonwealth's entitlement to the output of Canal Unit No. 2 to Green Mountain Power Corporation (GMP) over the period September 1, 1993 through September 1, 1998. This entitlement is referred to herein as the "GMP Quota;" (3) a Power Contract between itself and Commonwealth, which provides that Canal will credit all revenues from the sale of the GMP Quota to Commonwealth; and (4) a Power Sale Agreement between itself and GMP with respect to the sale of the GMP Quota.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Oklahoma

[Docket No. ER93–746–000]

Take notice that on June 30, 1993, Public Service Company of Oklahoma (PSO) tendered for filing a Transmission Service Agreement (Agreement), dated April 14, 1993, between PSO and Southwestern Public Service Company (SPS). Under the Agreement, PSO will provide transmission service for power and energy that SPS will sell to The Empire District Electric Company (EDE).

A copy of the filing has been sent to SPS, EDE and the Oklahoma Corporation Commission.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. The Montana Power Co.

[Docket No. ER93–747–000]

Take notice that on June 30, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a Letter Agreement Between Bonneville Power Administration and The Montana Power Company. Montana requests that the Commission accept the Agreement for

filing, to be effective on September 1, 1993.

A copy of the filing was served upon Bonneville Power Administration.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Company

[Docket No. ER93-748-000]

Take notice that on June 30, 1993, Southwestern Electric Power Company (SWEPCO), by its counsel, submitted for filing Amendment No. 2 to SWEPCO's Electric System Interconnection Agreement with Cajun Electric Power Cooperative, Inc. (SWEPCO FERC Rate Schedule No. 100). SWEPCO submitted corrections to the filing on June 30, 1993.

SWEPCO requests an effective date of the later of July 1, 1993, or the date on which SWEPCO completes its acquisition of the electric utility assets of Bossier Rural Electric Membership Cooperative, Inc., a Cajun member. Accordingly, SWEPCO requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Cajun, the Louisiana Public Service Commission, and copies of the transmittal letter only have been sent to other SWEPCO wholesale customers to advise them of the requested waiver of notice requirements.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. The United Illuminating Co.

[Docket No. ER93-750-000]

Take notice that on July 1, 1993, The United Illuminating Company (UI) filed a Modification of Wheeling Service Agreement to modify the Wheeling Service Agreement dated as of October 19, 1987, by and between UI and McCallum Enterprises I Limited Partnership. UI requests that the Modification be made effective as of the Closing of Title of two parcels of land in Derby, Connecticut.

Copies of the filing have been sent to the affected customer and to the Connecticut Department of Public Utility Control.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Public Service Co.

[Docket No. ER93-749-000]

Take notice that Southwestern Public Service Company (Southwestern) on June 30, 1993, tendered for filing two proposed supplements to its rate schedule for service to Cap Rock Electric Cooperative, Inc. (Cap Rock).

The first proposed supplement provides for the assignment by Cap Rock to Southwestern of Cap Rock's rights and obligations under its lease agreement with John Hancock Mutual Life Insurance Company. Southwestern has agreed to grant to Cap Rock the right to use the facilities and pay a dedicated facilities charge based on the lease payments. The second supplement relates to the lease by Cap Rock of certain land properties to Southwestern and the Sub-lease of these properties back to Cap Rock. Both of these supplements assist Cap Rock with procuring future financing for the construction of additional facilities on Cap Rock's system.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER93-751-000]

Take notice that PacifiCorp, on July 1, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Letter Agreement dated May 20, 1993 among Western Area Power Administration (Western), the United States Bureau of Reclamation (Reclamation) and PacifiCorp.

The contract provides for the installation of facilities by Reclamation, Western and PacifiCorp in connection with the conversion of PacifiCorp's 46 kilovolt Midway-Hale transmission line to 138 kilovolts.

PacifiCorp requests an effective date of sixty days from the date of the Commission's receipt of its filing.

Copies of this filing were supplied to Western, Reclamation, the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment date: July 20, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16566 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

Meeting

July 7, 1993.

Take notice that the Commission staff will meet with representatives of the General Agreement on Parallel Paths (GAPP) on Thursday, July 15, 1993 at 2 p.m. in the Commission meeting room, room 9306, 825 N. Capitol Street, NE., Washington, DC 20426. GAPP is a study group of the Interregional Transmission Coordination Forum. The GAPP representatives will describe GAPP's technical approach in addressing certain control and equity problems in the use of the bulk transmission system. Interested parties may attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16565 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-523-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

July 6, 1993.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP93-523-000]

Take notice that on June 29, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93-523-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add the existing Clay Basin delivery point in Daggett County, Utah and the existing Plymouth delivery point in Benton County, Washington to its Rate Schedule ODL-1 Service Agreement with Washington Natural Gas Company (Washington Natural), without any reallocation of maximum daily delivery obligations to these delivery points, under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that Washington Natural has requested the addition of the Clay Basin and Plymouth delivery points to its ODL/TF service agreements so it can use those agreements to have supplies delivered for storage for its account. Northwest further states that the total volumes presently authorized to be delivered to Washington Natural would not change as a result of the proposed delivery point additions.

Comment date: August 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP93–522–000]

Take notice that on June 29, 1993, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP93–522–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point for Mississippi Valley Gas Company (Mississippi) in Tunica County, Mississippi, under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that the new delivery point would enable Mississippi to render natural gas service to a new commercial development to be located on the Mississippi River near Tunica.

Texas Gas states further that the proposed maximum annual quantity of natural gas to be delivered at the proposed new delivery point would be 1,752,000 MMBtu, with a proposed maximum daily quantity of 4,800 MMBtu.

It is said that the addition of the new delivery point would not result in an increase in Mississippi's current daily contract demand nor detriment to Texas Gas's other customers.

Comment date: August 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP93–527–000]

Take notice that on June 30, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–527–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add the existing Stanfield, Oregon interconnection between Northwest and Pacific Gas Transmission Company (PGT) pipeline as a new delivery point for service under existing Rate Schedule SGS–I Service agreements with the Water Power (Water Power) and Cascade Natural Gas Corporation (Cascade) and reallocate the existing maximum daily delivery obligations for such service from off-PGT delivery points to the new Stanfield delivery point pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: August 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

4. El Paso Natural Gas Company

[Docket No. CP93–528–000]

Take notice that on June 30, 1993, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP93–528–000 pursuant to the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point in Maricopa County, Arizona, for firm deliveries of natural gas transported for Southwest Gas Corporation (Southwest) under El Paso's blanket certificates issued in Docket Nos. CP82–435–000 and CP88–433–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

El Paso proposes to construct and operate a delivery point to provide a firm transportation service for Southwest's residential and commercial customers in the Club West area of Maricopa County, Arizona. El Paso would deliver a maximum of 4,008 Mcf of natural gas per day for Southwest's account at the Club West delivery point. El Paso states that Southwest would reimburse El Paso for the estimated $82,500 construction costs for the proposed delivery point. El Paso also states that its tariff does not prohibit the addition of delivery points.

Comment date: August 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16567 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–7–48–000]

ANR Pipeline Co.; Tariff Filing

July 7, 1993.

Take notice that on July 1, 1993, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, to be effective August 1, 1993:

First Revised Volume No. 1

Second Revised Sheet No. 5

First Revised Volume No. 1–A

First Revised Sheet No. 7

ANR states that the purpose of the instant filing is to comply with the annual redetermination of the levels of ANR's "Reduction for Transporter's Use (%)", as required by ANR's currently effective Tariff, and article XI of ANR's Interim Settlement at Docket No. RP89–161, et al. (ANR Pipeline Company 60 FERC (CCH) ¶ 61,145 (1992)). ANR further states that the redetermined fuel use and lost-and-unaccounted for gas percentages shown on ANR's fuel matrix are based upon ANR's most recent three (3) calendar years experience of compressor fuel usage, and most recent four (4) calendar years experience of lost-and-unaccounted for gas.

ANR states that copies of the filing have been served on all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16500 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-149-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that ANR Pipeline Company (ANR), on July 1, 1993 tendered for filing as part of its FERC Gas Tariff, First Revised Volume Nos. 1 and 1-A and Original Volume Nos. 2 and 3 the tariff sheets listed on appendix A to the filing. ANR has requested that the Commission accept the tendered tariff sheets to become effective August 1, 1993.

ANR states that the referenced tariff sheets are being submitted pursuant to § 2.104 of the Commission's Regulations to implement partial recovery of $0.5 million of additional buyout buydown costs, part by a fixed monthly charge applicable to ANR's sales customers and part by a volumetric buyout buydown surcharge of $0.0001 per dth applicable to all throughput. In particular, this filing is being made pursuant to Article II of the Stipulation and Agreement filed by ANR on February 12, 1991 in Docket Nos. RP91-33-000 and RP91-35-0000, as approved by the Commission on March 1, 1991. ANR states that it intends to commence billing of the proposed fixed monthly charges and volumetric surcharge in September, 1993 for August, 1993 business.

ANR states that all of its Volume Nos. 1, 1-A, 2 and 3 customers and interested State Commissions have been apprised of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16487 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF93-126-000]

Birchwood Power Partners, L.P., Application for Commission Certification of Qualifying Status of a Cogeneration Facility

July 7, 1993.

On June 29, 1993, Birchwood Power Partners, L.P. of 100 Ashford Center North, Suite 400, Atlanta, Georgia 30338 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility which will be located approximately ten miles east of Fredericksburg, in King George County, Virginia will consist of a pulverized coal-fired steam generator, and an extraction/condensing steam-turbine generator. Steam from the facility will be used by Dominion Growers, Incorporated for heating and cooling a greenhouse complex. The primary energy source will be bituminous coal. The maximum net electric power production of the facility will be 237 MW. The facility is scheduled for commercial operation on November 29, 1996.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16484 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-152-000]

Carnegie Natural Gas Co.; Request for Waiver of Annual PGA Filing Requirements

July 7, 1993.

Take notice that on July 2, 1993, Carnegie Natural Gas Company (Carnegie) filed a request for waiver of the requirements under sections 154.304 and 154.305 of the Commission's regulations, 18 CFR 154.304 and 154.305 (1992), and section 23 of the General Terms and Conditions of Carnegie's FERC Gas Tariff, which require Carnegie to make a 1993 annual purchased gas adjustment (PGA) filing.

Carnegie states that waiver of the Annual PGA filing requirements is justified under the prevailing regulatory environment and the particular circumstances on Carnegie's system, citing its impending restructuring of services under Order No. 636 and its projected lack of firm sales until such restructuring. Carnegie further states that it will provide workpapers detailing its Account No. 191 activity, from May 1, 1992 until the effective date of its restructuring, when it files its limited section 4 application to direct bill its Account No. 191 balance after it becomes restructured and terminates its PGA.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16485 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-207-010 and RP89-116-003]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that on June 30, 1993, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with proposed effective date of August 1, 1993:

Thirty-Second Revised Sheet No. 26.1
Thirty-Second Revised Sheet No. 26A.1
Thirtieth Revised Sheet No. 26C
Twenty-Eighth Revised Sheet No. 26D

Columbia states that the amortization period over which it was authorized to collect its Order 500 volumetric surcharge expires July 31, 1993. Accordingly, the instant filing removes the current surcharge from Columbia's rates, effective August 1, 1993.

Columbia states that copies of the filing were served by the company upon each of its wholesale customers, interested state commissions and to each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16488 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-3-005]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that on June 29, 1993, Columbia Gas Transmission Corporation (Columbia Gas), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective July 1, 1993:

Second Revised Sheet No. 54
Second Revised Sheet No. 74

Columbia Gas states that this filing is being made to amend applicable tariff sheets in its existing tariff in compliance with 18 CFR 250.16(d)(2) to reflect a change in its marketing affiliate within the meaning of 18 CFR 250.16(b)(1)(i) and 18 CFR 161.2. Columbia Gas states that Columbia Energy Services Corporation will replace Columbia Gas Development Corporation as its marketing affiliate within the meaning of those regulations. Columbia Gas is requesting a waiver of the 30-day notice requirement pursuant to 18 CFR 154.51.

Columbia Gas states that copies of its filing has been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16489 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-6-21-000 and TM93-10-21-000]

Columbia Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 1, 1993, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1993:

Thirty-ninth Revised Sheet No. 26
Thirty-third Revised Sheet No. 26.1
Thirty-seventh Revised Sheet No. 26A
Thirty-third Revised Sheet No. 26A.1
Twenty-eighth Revised Sheet No. 26B
Twenty-seventh Revised Sheet No. 26B.1
Thirty-first Revised Sheet No. 26C
Twenty-first Revised Sheet No. 26C.1
Twenty-ninth Revised Sheet No. 26D
Thirty-fifth Revised Sheet No. 163

Columbia states the sales rates set forth on Thirty-third Revised Sheet No. 26.1 reflect an overall increase of 3.4¢ per Dth in the commodity rate and an overall increase of $.215 per Dth in the total demand rate when compared with the total CDS rates filed in Columbia's June 30, 1993 filing at Docket No. RP88-207 et al. Columbia also states that the transportation rates set forth on Twenty-first Revised Sheet No. 26C.1 and Twenty-ninth Revised Sheet No. 26D reflect an increase of .15¢ per Dth in the Fuel Charge component.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16495 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-4-009]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that on June 29, 1993, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective July 1, 1993:

Fourth Revised Sheet No. 84
Fourth Revised Sheet No. 125
Third Revised Sheet No. 160
Fourth Revised Sheet No. 189

Columbia Gulf states that this filing is being made to amend applicable tariff sheets in its existing tariff in compliance with 18 CFR 250.16(d)(2) to reflect a change in its marketing affiliate within the meaning of 18 CFR 250.16(b)(1)(i) and 18 CFR 161.2. Columbia Gulf states that Columbia Energy Services

Corporation will replace Columbia Gas Development Corporation as its marketing affiliate within the meaning of those regulations. Columbia Gulf is requesting a waiver of the 30-day notice requirement pursuant to 18 CFR 154.51.

Columbia Gulf states that copies of its filing have been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16490 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–8–23–000 and TM93–3–23–000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Eastern Shore Natural Gas Company (ESNG) on July 1, 1993, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1993.

ESNG states that the above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and Sections 21, 23 and 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.1184 per dt in the Commodity Charge and no change in the Demand Charge, as measured against ESNG's Compliance Filing in Doc. No. 92–227–000, as filed on June 25, 1993 and proposed to be effective on July 1, 1993.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16486 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA93–1–15–000]

Mid Louisiana Gas Co.; Compliance Filing

July 7, 1993.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on July 2, 1993, tendered for filing as part of its FERC Gas Tariff, First Revision Volume No. 1, the following tariff sheet with a proposed effective date of September 1, 1993:

Ninety-Eighth Revision Sheet No. 3a

Mid Louisiana states that the purpose of the filing of the Tariff Sheet is to project a current cost of gas for the quarterly period beginning September 1, 1993, in compliance with the Commission's Regulations issued in Order Nos. 483 and 493–A. Mid Louisiana also states that Ninety-Eighth Revision Sheet No. 3a is to reflect a decrease of $0.6699 in Mid Louisiana's current cost of gas, exclusive of surcharge. Additionally, Mid Louisiana is reflecting a new surcharge rate for the annual period beginning September 1, 1993.

Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16499 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–150–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Northern Natural Gas Company (Northern), on July 1, 1993, tendered for filing as part of its FERC Gas Tariff Fourth Revised Volume No. 1, the following tariff sheet with a proposed effective date of August 1, 1993: First Revised Sheet No. 261.

Northern states that the filing establishes a mechanism to direct bill or refund, as appropriate, any balance existing in Northern's deferred ANGTS account upon termination of Northern's current ANGTS Rate Adjustment mechanism. Therefore, Northern has filed First Revised Sheet No. 261 to a establish direct bill/refund provision effective August 1, 1993.

Northern states that copies of the filing were served upon the Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.44 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16482 Filed 7–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA93-1-86-003 and TQ93-5-86-000]

Pacific Gas Transmission Co.; Change in Sales Rates Pursuant to Purchased Gas Adjustment

July 7, 1993.

Take notice that on July 1, 1993, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act a proposed change in rates applicable to service rendered under Rate Schedule PL-1 in accordance with Paragraph 21 of its FERC Gas Tariff, Second Revised Volume No. 1.

PGT states that a copy of this filing has been served on PGT's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16493 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[FERC No. JD93-07805T]

Railroad Commission of Texas, Austin Chalk Tight Formation Determination; Informal Conference

July 8, 1993.

Take notice that an informal conference will be convened in the above-referenced proceeding on July 28, 1993, at 10 a.m. The conference will be held in room 3400-C at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Janet Ardinger at (202) 208-0895.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16564 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-151-000]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Tariff

July 7, 1993.

Take notice that on July 1, 1993, Tennessee Gas Pipeline Company (Tennessee) filed a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission promulgated thereunder to recover gas supply realignment costs (GSR Costs) incurred as a consequence of Tennessee's implementation of Order No. 636.

Tennessee stated that the tariff sheets which provide for the recovery of GSR Costs and which describe the mechanism pursuant to which those costs are to be recovered were submitted to the Commission in Tennessee's restructuring proceeding, Docket No. RS92-23-005 *et. al.* Tennessee states that the sole purpose of the filing in this docket is to set forth the GSR Costs and the related rates that will be charged by Tennessee pursuant to Order No. 636 for the quarter commencing August 1, 1993. The GSR Costs sought to be recovered include costs associated with the reformation or termination of certain supply contracts as well as the costs associated with continuing to perform under the Great Plains Associates contract and certain Canadian supply contracts.

Tennessee requested an effective date of August 1, 1993, or alternatively the date established by Commission order for implementation of Tennessee's restructuring.

Tennessee stated that copies of this tariff filing were posted in conformance with section 154.16 of the Commission's Regulations and in conformity therewith were mailed to all affected customers of Tennessee and interested state commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16483 Filed 7-12-93; 8:45 am]Bureau of Land Management

BILLING CODE 6717-01-M

[Docket No. RP93-147-000]

Tennessee Gas Pipeline Co.; Filing To Implement Direct Billing

July 7, 1993.

Take notice that on July 1, 1993, Tennessee Gas Pipeline Company (Tennessee) filed a limited rate adjustment to direct bill the balance in its Account 191 to remaining sales customers over the 12 months following implementation of Tennessee's restructured tariff in Docket No. RS92-23. The amounts to be billed to current sales customers following implementation are set forth in the following tariff sheet, which will be part of Tennessee's Fifth Revised Volume No. 1:

Original Sheet Nos. 31-34

Tennessee states that the tariff sheets which provide for the mechanism pursuant to which those costs are to be recovered were submitted to the Commission in Docket No. RS92-23-005 et al. Tennessee states that the purpose of the filing in this docket is to set forth the lump sum amounts and related monthly payments that will be charged by Tennessee pursuant to Article XIX for the annual period commencing August 1, 1993. Tennessee states that pursuant to this provision the amounts to be billed will be adjusted after the six month period following implementation.

Tennessee requests an effective date of August 1, 1993, or alternatively the date established by Commission order for implementation of Tennessee's restructuring.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16502 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-148-000]

Tennessee Gas Pipeline Co.; Tariff Adjustment Filing

July 7, 1993.

Take notice that on July 1, 1993, Tennessee Gas Pipeline Company (Tennessee) filed a limited application to track transportation costs paid to other pipelines (Account No. 858 Costs) following implementation of Tennessee's restructured tariff in Docket No. RS92-23. The adjustment, which is requested to become effective on August 1, 1993, is reflected in Original Sheet No. 30, which is filed to be part of Tennessee's restructured tariff, Fifth Revised Volume No. 1, upon its implementation in Docket No. RS92-23.

Tennessee states that the tariff sheets which provide for the mechanism pursuant to which those costs are to be recovered were submitted to the Commission in Docket No. RS92-23. Tennessee states that the purpose of the filing in this docket is to set forth the 858 Costs and the related rates that will be charged by Tennessee pursuant to these provisions (Article XXIV of Fifth Revised Volume No. 1) for the annual period commencing August 1, 1993.

Tennessee has requested an effective date of August 1, 1993, or alternatively the date established by Commission order for implementation of Tennessee's restructuring.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulator Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16492 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-6-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 1, 1993 tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing. The proposed effective date of these revised tariff sheets is August 1, 1993.

Texas Eastern states that these revised tariff sheets are filed pursuant to section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each August 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers. Texas Eastern states that these revised tariff sheets are being filed to reflect changes in its projected expenditures for electric power for the twelve month period beginning August 1, 1993.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and current Rate Schedule FT-1 and IT-1 shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16496 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-6-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on July 1, 1993, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with a proposed effective date of August 1, 1993:

Fourth Revised Seventy-third Revised Sheet No. 10

Fourth Revised Seventy-second Revised Sheet No. 10A

Fourth Revised Fifty-fourth Revised Sheet No. 11

Fourth Revised Forty-fourth Revised Sheet No. 11A

Fourth Revised Forty-third Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to a Quarterly PGA Rate Adjustment and are proposed to be effective August 1, 1993. Texas Gas further states that the proposed tariff sheets reflect a commodity rate decrease of ($.8611) per MMBtu from the rates set forth in the Out-of-Cycle PGA filed April 29, 1993 (Docket No. TQ93-5-18). Texas Gas also states that no changes in the demand or SGN standby rates are proposed in the instant filing.

Texas Gas states that copies of the filing were served upon Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16497 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-6-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that on July 1, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, the revised tariff sheets contained in Appendix A to the filing.

Texas Gas states that the proposed tariff sheets reflect changes to its Base Tariff Rates pursuant to the Transportation Cost Adjustment provisions contained in section 32 of its FERC Gas Tariff Original Volume No. 1 and section 27 of its FERC Gas Tariff First Revised Volume No. 2-A, and are proposed to be effective August 1, 1993.

Texas Gas states that copies of the filing have been served upon Texas Gas' jurisdictional sales customers, all parties on the Commission's official restricted service list in the consolidated proceedings, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16491 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

Transcontinental Gas Pipe Line Corp.; Proposed Changes to FERC Gas Tariff

[Docket No. TM93-17-29-000]

July 7, 1993.

Take notice that on June 30, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sixth Revised Sheet No. 20, with a proposed effective date of June 1, 1993.

TGPL states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S-2. TGPL states that the tracking filing is being made pursuant to section 26 of the General Terms and Conditions of Volume No. 1 of TGPL's FERC Gas Tariff.

TGPL states that in Appendix A of the filing is the explanation of the rate changes and details regarding the computation of the revised S-2 rates.

TGPL states that copies of TGPL's filing are being mailed to each of its S-2 customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Sections 385.214, 385.211). All such petitions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16494 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-5-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 7, 1993.

Take notice that Williams Natural Gas Company (WNG) on July 1, 1993, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to with proposed effective date of August 1, 1993:

Third Revised Fifteenth Revised Sheet No. 6
Third Revised Sixteenth Revised Sheet No. 6A
Third Revised Seventeenth Revised Sheet No. 9

WNG states that pursuant to the Purchased Gas Adjustment in Article 18 of its FERC Gas Tariff, it proposes to decrease its rates effective August 1, 1993 to reflect a decrease of $.1051 in the Cumulative Adjustment.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16498 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

[FERC No. JD92-06705T]

Wyoming Oil and Gas Conservation Commission, Dakota Tight Formation Determination; Informal Conference

July 8, 1993.

Take notice that an informal conference will be convened in the above-referenced proceeding on July 16, 1993, at 9 a.m. The conference will be held in room 3400-C at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

For further information, contact Janet Ardinger at (202) 208-0895.

Lois D. Cashell,

Secretary.

[FR Doc. 93-16563 Filed 7-12-93; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Announcement of Public Scoping Meetings for the Proposed 500-kV Navajo Transmission Line Project—Arizona, New Mexico, and Nevada

AGENCY: Western Area Power Administration, DOE.

ACTION: Announcement of public meetings.

SUMMARY: Western Area Power Administration (Western) published a notice of intent (NOI) to prepare an environmental impact statement (EIS) in the Federal Register (FR) on May 26, 1993, 58 FR 30162. That NOI also announced a series of public scoping

meetings regarding a proposal to construct a 500-kV alternating current transmission line known as the Navajo Transmission Project (NTP). Subsequently, Western published the postponement of the public scoping meetings in the FR on June 11, 1993, 58 FR 32666. This notice is intended to establish the rescheduled public EIS scoping meetings for the NTP. Western intends for the scoping period for the NTP EIS to remain open 2 weeks following the last scoping meeting listed below.

DATES: Western's public information and scoping meetings will include: notification of the proposed action to the public and Federal, State, tribal, and local agencies; identification by the public of issues to be considered in the EIS; and the solicitation of assistance from the public to identify reasonable alternative transmission line routes and substation sites. In addition, the public will have an opportunity to ask questions regarding the proposed project. Western and Dine' Power Authority, the Navajo Nation tribal enterprise with responsibility for this project, will conduct 11 public scoping meetings throughout the study area. Maps and other information on preliminary alternatives conceived for this project will be available at these meetings. All of the public meetings will be informal and will begin at 7 p.m. The locations and dates for these meetings are:

Location	Date
Boulder City, Nevada, Super 8 Motel, 704 Nevada Highway.	August 2.
Kingman, Arizona, Holiday Inn, Cactus Room, 3100 East Andy Devine.	August 3.
Flagstaff, Arizona, Council Chambers, City Hall, 211 West Aspen.	August 4.
Dilkon, Arizona, Dilkon Chapter House.	August 5.
Page, Arizona, Holiday Inn, 287 North Lake Powell Blvd.	August 9.
Tuba City, Arizona, Tuba City Chapter House.	August 10.
Kykotsmovi, Arizona, Hopi Civic Center.	August 12.
Shiprock, New Mexico, Shiprock Chapter House.	August 16.
Kayenta, Arizona, Kayenta Chapter House.	August 17.
Farmington, New Mexico, Civic Center, 200 West Arrington.	August 18.
Window Rock, Arizona, Civic Center.	August 19

Press releases announcing the meeting times and dates will be sent to newspapers in the areas where the meetings will be held. Letters providing notification of the meetings will be sent to all those on the mailing list detailed below. Written comments on the scope of the EIS for the proposed NTP should be received by Western no later than September 3, 1993. Comments on the project will be accepted throughout the National Environmental Policy Act (NEPA) process.

FOR FURTHER INFORMATION CONTACT: Western will maintain a mailing list of interested parties and persons who wish to be kept informed of the progress of the EIS. If you are interested in receiving future information or wish to submit written comments, please call or write: Michael G. Skougard, Environmental Specialist, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147-0606, (801) 524-5493.

For general information on DOE's NEPA review procedures or status of a NEPA review, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586-4600 or (800) 472-2756.

Issued at Golden, Colorado, July 2, 1993.

William H. Clagett

Administrator, Western Area Power Administration.

[FR Doc. 93-16569 Filed 7-12-93; 8:45 am]

BILLING CODE 6450-01-P

Parker-Davis Project Proposed Firm Power Rate and Firm and Nonfirm Transmission Service Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of reopening of comment period on the proposed Parker-Davis Project (P-DP) firm power rate and firm and nonfirm transmission rate adjustments.

SUMMARY: Western Area Power Administration (Western) is announcing a second consultation and comment period on the P-DP rate adjustments for firm power and firm and nonfirm transmission service. This rate action was originally announced in the Federal Register on May 8, 1992, at 57 FR 19904.

The comment and consultation period of the ratemaking process ended September 28, 1992. Since the comment and consultation period ended, the Power Repayment Study (PRS) has been revised. The revised PRS has been updated with more current data from Western's and the Bureau of Reclamation's (Reclamation) fiscal year (FY) 1992 Financial Statements and the Engineering Ten Year Construction and Replacement Plan (Ten Year Plan) dated July 1992. Further, Western is experiencing abnormal deficiencies in P-DP generation for FY 1993. The flooding conditions along the Colorado River in southwestern Arizona are creating these abnormal generation deficiencies. These conditions have resulted in a significantly greater purchased power expense for P-DP than was originally projected. Western incorporated these increased purchased power costs into the revised PRS to ensure that the rates generate adequate revenues to meet the P-DP's current and future year expenses.

Because of the increase in purchased power expense, Western is reopening the comment period on the Proposed Rates for firm power and firm and nonfirm transmission service. This action is taken to give the P-DP customers and interested parties an opportunity to comment on the revised PRS.

The Proposed Rates for firm power and firm and nonfirm transmission service were initially proposed as a single-step rate process. However, in response to customer comments, Western is proposing a two-step rate process. Step one of the Proposed Rates for firm power and firm and nonfirm transmission service will become effective October 1, 1993. Step two of the Proposed Rates for firm power and firm and nonfirm transmission service will become effective October 1, 1995.

Step one of the Proposed Rates for firm power consists of an energy rate of 5.80 mills/kilowatthour (mills/kWh) and a capacity rate of $2.54/kilowattmonth (kW/month) for a composite rate of 11.61 mills/kWh. Step one of the Proposed Rates for transmission service consists of a firm transmission service rate of $11.17/kW/year ($0.93/kW/month), a nonfirm transmission service rate of 2.12 mills/kWh, and a transmission service rate for Salt Lake City Area Integrated Projects (SLCA/IP) of $5.58/kW/season ($0.93/kW/month).

Step two of the Proposed Rates for firm power consists of an energy rate of 5.98 mills/kWh and a capacity rate of $2.62/kW/month for a composite rate of 11.96 mills/kWh. Step two of the Proposed Rates for transmission service consists of a firm transmission service rate of $14.23/kW/year ($1.19/kW/month), a nonfirm transmission service rate of 2.71 mills/kWh, and a transmission service rate for SLCA/IP of $7.12/kW/season ($1.19/kW/month).

The existing P-DP rates for firm power consist of an energy rate of 4.52 mills/kWh and capacity rate of $1.98/kW/month for a composite rate of 9.03 mills/kWh. The existing rates for

transmission service consist of a firm transmission service rate of $8.20/kW/year ($0.68/kW/month), a nonfirm transmission service rate of 1.50 mills/kWh, and the transmission service for SLCA/IP rate of $4.10/kW/season ($0.68/kW/month).

The following table compares the P-DP Existing Rates with the Proposed Rates:

COMPARISON OF EXISTING AND STEP ONE PROPOSED RATES

	Existing rates as of FY 1990	Proposed rates effective 10/1/1993[1]	Percent change (%)
Firm Power Rate Schedule	PD-F3	PD-F4	
Composite (mills/kWh)	9.03	11.61	29
Energy (mills/kWh)	4.52	5.80	28
Capacity ($/kW/month)	$1.98	$2.54	28
Firm Transmission Service Rate Schedule	PD-FT3	PD-FT4	
Firm Transmission Service ($/kW/year)	$8.20	$11.17	36
Nonfirm Transmission Service Rate Schedule	PD-NFT3	PD-NFT4	
Nonfirm Transmission Service (mills/kWh)	1.50	2.12	41
Transmission Service for SLCA/IP Rate Schedule	PD-FCT3	PD-NFT4	
Transmission Service for SLCA/IP ($/kW/season)	$4.10	$5.58	36

[1] Step one of the Proposed Rates will be effective from October 1, 1993, through September 30, 1995.

COMPARISON OF EXISTING AND STEP TWO PROPOSED RATES

	Existing rates as of FY 1990	Proposed rates effective 10/1/1995	Percent change (%)
Firm Power Rate Schedule	PD-F3	PD-F4	
Composite (mills/kWh)	9.03	11.96	32
Energy (mills/kWh)	4.52	5.98	32
Capacity ($/kW/month)	$1.98	$2.62	32
Firm Transmission Service Rate Schedule	PD-FT3	PD-FT4	
Firm Transmission Service ($/kW/year)	$8.20	$14.23	74
Nonfirm Transmission Service Rate Schedule	PD-NFT3	PD-NFT4	
Nonfirm Transmission Service (mills/kWh)	1.50	2.71	81
Transmission Service For SLCA/IP Rate Schedule	PD-FCT3	PD-NFT4	
Transmission Service for SLCA/IP ($/kW/season)	$4.10	$7.12	74

[1] Step two of the Proposed Rates will be effective from October 1, 1995, through September 30, 1998.

PROCEDURES: An addendum to the brochure dated May 1992 has been distributed to the P-DP customers and other interested parties prior to publication of this notice. This addendum addresses the changes made to the revised PRS that was used in the development of the new Proposed Rates, as compared to the rates presented in the brochure dated May 1992. The revised PRS contains data from Western's and Reclamation's FY 1992 Financial Statements, FY 1993 Congressional Budget data, and the Ten Year Plan dated July 1992. Additionally, the revised PRS contains actual and projected FY 1993 purchased power expense, as compared to the original PRS which contained projections from the FY 1993 Congressional Budget. Customers and interested parties are invited to comment on the additional purchased power expense, and how it is incorporated into the revised PRS. Comments already submitted will be given full consideration in this second comment period and do not need to be resubmitted.

Following the close of the consultation and comment period, Western will consider any changes as a result of public comments. Western will recommend the results of the revised PRS as the final Proposed Rates to the Assistant Secretary for Energy Efficiency and Renewable Energy to be placed into effect on an interim basis prior to submission to the Federal Energy Regulatory Commission (FERC) for approval on a final basis.

DATES: The consultation and comment period began on June 29, 1993, with the distribution of the Addendum to the P-DP customers and will end on August 2, 1993. Western will explain changes, including the cost incurred from purchased power and how it effects the Proposed Rates for firm power and firm and nonfirm transmission service, at a public information forum. The public information forum will be held at the Phoenix Area Office, 615 South 43rd Avenue, Phoenix, Arizona, beginning at 9 a.m. on July 14, 1993.

Western will receive oral and written comments at a public comment forum at the Phoenix Area Office beginning at 1 p.m. on July 14, 1993. Both forums will be transcribed by a court reporter. All questions raised at the public comment forum will be answered at least 15 days before the end of the consultation and comment period. Written comments should be received by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

ADDRESSES: Written comments should be sent to: Mr. Thomas A. Hine, Area Manager, Western Area Power Administration, Phoenix Area Office, P.O. Box 6457, Phoenix, AZ 85005-6457.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Eiler, Assistant Area Manager for Power Marketing, Western Area Power Administration, Phoenix Area Office, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2650.

SUPPLEMENTARY INFORMATION: Power and transmission rates for the P–DP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); and the Reclamation Act of 1902 (43 U.S.C. 372) *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act 1939 (43 U.S.C. 485h(c)).

By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of the Department of Energy delegated: (1) The authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy for the Department of Energy (this has been reauthorized to the Assistant Secretary for Energy Efficiency and Renewable Energy), and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC.

The procedures for public participation in the rate adjustments for firm power and firm and nonfirm transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

AVAILABILITY OF INFORMATION: All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the Proposed Rates for firm power and firm and nonfirm transmission service are and will be made available for inspection and copying at the Phoenix Area Office, 615 South 43rd Avenue, Phoenix, Arizona, 85005.

Issued in Golden, Colorado, July 1, 1993.

William H. Clagett,

Administrator, Western Area Power Administration.

[FR Doc. 93–16568 Filed 7–12–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4678–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 12, 1993.

FOR FURTHER INFORMATION OR A COPY OF THE ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Part B Permit Application, Permit Modifications, and Special Permits (ICR No. 1573.03; OMB No. 2050–0009). This is a renewal of a currently approved ICR.

Abstract: This ICR is a comprehensive presentation of the information collection activities for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) submitting applications for a Part B permit or permit modification, as provided in 40 CFR parts 264 and 270, and details the requirements for: demonstrations and exemptions from permit requirements, the Part B permit application, and permit modifications and special permits.

Applicants must respond to a variety of general reporting and recordkeeping requirements, including record retention, notice of changes, notice of health threat, etc. EPA will use this information to: (1) Issue permits, (2) substantiate information that has been submitted in the permit, (3) assure that facilities are in compliance with the conditions of their permits, and (4) identify instances where permits need to be revised to accommodate new situations.

Burden Statement: The public reporting and recordkeeping burden for this collection is estimated to average 183 hours per response and includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of hazardous waste TSDFs.

Estimated Number of Respondents: 982.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 179,861 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Title: Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types (ICR No. 1572.02; OMB No. 2050–0050). This is a renewal of a currently approved ICR.

Abstract: This ICR is a comprehensive presentation of the information collection activities related to specific unit requirements and special waste processes and types, as provided in 40 CFR parts 264, 265, and 266, for owners/operators of facilities that treat, store, or dispose of hazardous wastes in tank systems, surface impoundments, waste piles, land treatment, landfills, incinerators, thermal treatment units, chemical, physical and biological treatment units, unit process vents, miscellaneous units, and specific hazardous waste recovery/recycling facilities.

Owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) must collect, record, and in some cases report to EPA. Activities include: demonstrations for exemptions and variances, system assessments and certifications, leak tests and inspections, repair certifications, design and operating requirements, waste management plans, certifications of closure, monitoring and inspection data, and reporting releases and information pertinent to releases. Recordkeeping requirements include maintaining records on the types of wastes treated, stored, or disposed; operating methods; location, design, and construction of facilities; contingency plans; and maintenance of facilities.

EPA uses the information for a variety of inspection, enforcement, and tracking purposes.

Burden Statement: The public reporting burden for this collection is estimated to vary from 8 to 234 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of hazardous waste treatment, storage and disposal facilities.

Estimated Number of Respondents: 4,236.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 514,306 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Title: General Hazardous Waste Facility Standards (ICR No. 1571.03; OMB No. 2050–0120). This is a renewal of a currently approved collection.

Abstract: This ICR is a comprehensive presentation of the information collection activities for hazardous waste treatment, storage, and disposal facilities (TSDFs), as provided in 40 CFR parts 264 and 265. Owners or operators of hazardous waste facilities must collect, record, and in some cases report data to EPA. Activities include: developing and implementing a written waste analysis plan for wastes received; recording facility inspections; documenting compliance with required precautions to prevent reactions for ignitable, reactive or incompatible wastes; maintaining a written operating record with information on general facility operating practices; submitting copies of records of waste disposal locations and quantities; preparing and maintaining contingency plans; submitting emergency reports whenever an imminent or actual emergency situation occurs; and developing and maintaining closure and post-closure plans, amending plans when appropriate and submitting to EPA closure certifications and post-closure notices. Owners or operators are also required to establish financial assurance mechanisms for closure, post-closure care, and liability for third-party bodily injury or property damage; to provide initial cost estimates and subsequent updates of those estimates for closure and post-closure care; and to provide EPA with evidence of the established financial mechanisms.

Recordkeeping requirements for owners or operators of hazardous waste facilities include record maintenance of all hazardous wastes handled; copies of waste disposal locations and quantities; operating methods; techniques and practices for treatment, storage, or disposal of hazardous waste; contingency plans; financial requirements; personnel training documents; and location, design, and construction of facilities.

Burden Statement: The public reporting burden for this collection is estimated to average 73 hours per response and includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated annual recordkeeping burden is 18 hours per recordkeeper.

Respondents: Owners and operators of TSDFs.

Estimated Number of Respondents: 4,443.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 404,850 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Title: RCRA Hazardous Waste Permit Application and Modification, Part A (ICR No. 262.06; OMB No. 2050–0034). This is a renewal of a currently approved collection.

Abstract: This ICR discusses the requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) submitting Part A permit applications or Part A permit modifications as required by section 3005 of the Resource Conservation and Recovery Act (RCRA). The requirements for submitting and modifying a Part A permit application are codified at 40 CFR part 270.

The RCRA permit application asks for the characteristics and conditions of the site and of the hazardous waste handled. The information requested includes general facility information (name, mailing address, location), a description of the hazardous waste activity, a topographic map, and a brief description of the nature of business. The application must be revised if certain changes are made to a facility.

EPA uses the information in the Part A permit application for a variety of purposes, to include: identifying the person(s) legally responsible for hazardous waste activity, determining which facilities require permits under more than one program, assessing potential for the facility to pollute nearby ground and surface waters, and defining the specific wastes a facility is legally allowed to handle for different purposes.

Burden Statement: The public reporting burden for this collection is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of hazardous waste treatment, storage, and disposal facilities.

Estimated Number of Respondents: 825.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9,942 hours.

Frequency of Collection: One-time per permit application.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Title: Notification of Hazardous Waste Activity (ICR No. 261.10; OMB No. 2050–0028). This is a renewal of a currently approved collection.

Abstract: Any person generating, transporting, and/or operating a facility

for storage, treatment, or disposal of hazardous waste must file a notification form with EPA (or an authorized State). The information requested includes the location and general description of hazardous waste activity. EPA uses the information for a variety of inspection, enforcement, and tracking purposes.

Burden Statement: The public reporting burden for this collection is estimated to average 3.1 hours per response and includes all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of facilities that generate, transport, or handle hazardous waste.

Estimated Number of Respondents: 35,000.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 108,500 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 1, 1993.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 93-16556 Filed 7-12-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4678-6]

Workshop on Exposure Factors Handbook

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a workshop sponsored by the U.S. Environmental Protection Agency's (EPA's) Risk Assessment Forum to develop recommendations for potential revisions and additions to EPA's 1990 *Exposure Factors Handbook* (Handbook) (EPA/600/8-89/043).

DATES: The workshop will begin on Wednesday, July 21, 1993, at 8:30 a.m. and end on Thursday, July 22, 1993, at 5 p.m. Member of the public may attend as observers.

ADDRESSES: The meeting will be held at the Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC.

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Eastern Research Group at 617/674-7374 or contact Mara Evans, Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, Massachusetts 02173, Tel: 617/674-7316 by Friday, July 16, 1993. Space is limited.

FOR FURTHER INFORMATION CONTACT:

Clare Stine, U.S. Environmental Protection Agency, Risk Assessment Forum (RD-672), 401 M Street, SW., Washington, DC 20460, Tel: (202) 260-6743.

SUPPLEMENTARY INFORMATION: The revised *Exposure Factors Handbook* is intended to serve as a support document to EPA's Exposure Assessment Guidelines (57 FR 22888; May 29, 1992) by providing data on factors that may be needed to calculate human exposure to toxic chemicals. The Guidelines were developed to promote consistency across exposure assessment activities carried out by various EPA offices. The Handbook provides a common data base that all Agency programs can use to derive values for exposure assessment factors.

This workshop will focus on developing recommendations on improving the 1990 *Exposure Factors Handbook*, and will seek consensus on recommendations for potential revisions and additions, including identification of new exposure factors and data sources.

To obtain a single copy of the 1990 Handbook, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: 513/569-7562. Please provide you name, mailing address, and EPA document number EPA/600/8-89/043.

Dated: July 7, 1993.

Carl Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93-16545 Filed 7-12-93; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-60016; FRL-4053-5]

TSCA Section 8(e); Notice of Clarification and Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of clarification; solicitation of public comment.

SUMMARY: This Notice solicits public comment on certain refinements to EPA's policy concerning the mandatory reporting of information under section 8(e), the "substantial risk" information reporting provision of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq. Specifically, comments are sought on EPA's section 8(e) policy refinements concerning mandatory reporting of information on the release of chemical substances to, and the detection of chemical substances in, environmental media. Comments are also sought on specific refinements made to EPA's policy concerning the reporting deadline for written "substantial risk" information and the circumstances under which certain information need not be reported to EPA under section 8(e) of TSCA. Finally, this notice reaffirms the Agency's position concerning claims of confidentiality for information contained in a notice of substantial risk under section 8(e).

DATES: Written comments on the reporting guidance set forth in this Notice must be submitted in triplicate and received by EPA no later than September 13, 1993.

ADDRESSES: All comments must be transmitted in triplicate to: TSCA Document Receipt Office (TS-790), TSCA Section 8(e) Public Docket (Docket No. OPPTS-60016), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

TSCA section 8(e) states, "Any person who manufactures, [imports,] processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment

shall immediately inform the [EPA] Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information" [15 U.S.C. 2607(e)]. The broad scope and nature of TSCA section 8(e) makes it one of the most important health and safety data reporting provisions under TSCA. The statutory language of section 8(e) and the section 8(e) interpretive documents issued to date require the exercise of a certain degree of judgment in determining the section 8(e) reportability of information.

The section 8(e) reporting requirements became effective on January 1, 1977, the effective date of TSCA. Although section 8(e) is self-implementing, EPA issued a proposed policy statement on September 9, 1977 (42 FR 45362), and sought public comment with regard to the Agency's interpretation and implementation of section 8(e). Following receipt and consideration of numerous public comments, on March 16, 1978 (43 FR 11110), EPA issued a final TSCA section 8(e) policy statement ("Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk," hereinafter cited as the "1978 Policy Statement"). The 1978 Policy Statement describes the types of information that EPA considers reportable under section 8(e) and describes the procedures for reporting such information to EPA. On May 29, 1987 (52 FR 20083), EPA amended the 1978 Policy Statement to reflect a change in the address to which written section 8(e) notices must be transmitted. In June 1991, the Agency issued a TSCA Section 8(e) Reporting Guide, which is available from the source listed under **FOR FURTHER INFORMATION CONTACT** in this document.

II. TSCA Section 8(e) CAP

On February 1, 1991 (56 FR 4128), the Agency announced a one-time voluntary TSCA Section 8(e) Compliance Audit Program ("CAP"). The CAP is designed primarily to: (1) Achieve EPA's goal of obtaining any outstanding section 8(e) information, and (2) encourage companies to voluntarily audit their files for section 8(e)-reportable data. The TSCA Section 8(e) CAP incorporates stipulated monetary penalties and an overall monetary penalty ceiling.

In reviewing existing section 8(e) guidance as the result of questions raised by companies considering participating in the Section 8(e) CAP, EPA determined that Parts V(b)(1) and V(c) of the 1978 Policy Statement needed some refinement. On June 20, 1991 (56 FR 28458), EPA announced that the Agency was suspending the applicability of Parts V(b)(1) and V(c) of EPA's 1978 Policy Statement which outlined the reportability of data on "widespread and previously unsuspected distribution in environmental media" and "emergency incidents of environmental contamination," respectively. The regulated community was informed that EPA would modify the section 8(e) policy to provide greater specificity regarding the types of environmental release, environmental detection, and environmental contamination information that should be submitted under section 8(e). In the interim, the regulated community was directed by EPA to focus on the statutory language of section 8(e) as the standard by which to determine the reportability of such information for purposes of the Section 8(e) CAP as well as ongoing compliance with section 8(e).

On September 30, 1991 (56 FR 49478), EPA announced an extension of the section 8(e) CAP reporting deadline for information relating to the release of chemicals to and the detection of chemicals in environmental media until such time as the Agency develops final refined section 8(e) reporting guidance on this point. This Notice addresses only the reportability of information concerning non-emergency situations on "widespread and previously unsuspected distribution in environmental media." The Agency has determined that any refined and/or amended guidance concerning the reportability of information on "emergency incidents of environmental contamination" (EIECs) under section 8(e) should be developed as part of the Agency's over-all policy concerning Federal chemical emergency/accident prevention, reporting, response, and/or remediation. EPA is deferring publication of any refined and/or amended guidance concerning the section 8(e) reportability of information on EIECs until issues associated with chemical emergency reporting policy are more fully defined and evaluated. The regulated community is again directed to focus on the statutory language of section 8(e) as the standard by which to determine the reportability of information on EIECs until that time.

EPA is in the process of resolving enforcement and compliance issues concerning reporting of section 8(e) "environmental" information under "Phase 2" of the CAP, and under section 8(e) more generally. After EPA considers the comments received in response to this notice, the Agency will issue in the **Federal Register** final refined guidance for reporting information concerning non-emergency situations regarding environmental contamination. The notice will include discussion of compliance and enforcement issues associated with the refined guidance.

III. Section 8(e) Policy Refinement

As section 8(e) is interpreted in Parts V(b)(1) and V(c) of the 1978 Policy Statement, EPA requires the reporting of certain substantial risk information concerning the release of chemical substances to, and the detection of chemical substances in, any environmental media. In order to enhance TSCA section 8(e) implementation, EPA is herein proposing refinements to the guidance presented in Part V(b)(1) of the 1978 Policy Statement. EPA is offering all interested parties the opportunity to submit written comments relating to the specific types of chemical release and detection information that should be reported under section 8(e) of TSCA.

Additionally, since EPA issued its 1978 Policy Statement, there have been numerous Federal laws passed and/or amended, and a large number of Federal regulations promulgated that are designed to gather chemical-related information, including information relating to the release of chemicals to and the detection of chemicals in the environment. Moreover, there may be other circumstances under which information may be considered known to the Administrator under TSCA section 8(e); several are listed in Part VII of the 1978 Policy Statement and other circumstances are identified herein. Therefore, comments are also being solicited on the circumstances under which EPA should consider itself to be adequately informed about substantial risk information, thereby falling outside of the mandatory reporting requirements of section 8(e).

Also, concerning Part IV of the 1978 Policy Statement, EPA intends to change the current 15–working day reporting deadline for the submission of written reports containing substantial risk information to 30 calendar days. Note that this slightly longer reporting deadline would apply only to written reports; oral reports regarding emergency incidents of environmental contamination will continue to be required to be made immediately (i.e., "as soon as [one obtains] knowledge of the incident," see Part IV of the 1978 Policy Statement). EPA believes the change from 15 working days to 30 calendar days would significantly relieve the burden on persons subject to section 8(e) reporting without substantially affecting EPA's ability to appropriately evaluate and respond in a

timely manner to the reported information.

With regard to follow-up reporting to oral reports concerning EIECs, EPA intends to eliminate the requirement in Part IV of the 1978 Policy Statement that a written report describing simply that an EIEC has occurred (i.e., the EIEC event itself) be submitted to the Agency. EPA believes that oral notification made to an appropriate Agency contact, as listed in Part IX of the 1978 Policy Statement, is generally sufficient notification for purposes of TSCA section 8(e). However, if health or environmental effects as described in Parts V(a) and V(b) of the 1978 Policy Statement are observed in conjunction with or subsequent to the release or detection, and the released or detected chemical substance or mixture is strongly implicated as being the cause of those effects, a written report would need to be submitted to EPA within 30 calendar days (the current requirement is 15–working days; see the preceding paragraph describing the intended reporting deadline change).

Finally, EPA is correcting the address and certain 24–hour emergency telephone numbers under Part IX of the 1978 Policy Statement, which describes particular reporting requirements.

A. Widespread/Previously Unsuspected Distribution

Part V(b)(1) of the 1978 Policy Statement explains that "[w]idespread and previously unsuspected distribution in environmental media, as indicated in studies (excluding materials contained within appropriate disposal facilities)" must be reported under section 8(e). Since 1978, EPA has received numerous written section 8(e) submissions alerting the Agency to the fact that a chemical known or suspected to be capable of causing serious health and/or environmental effects has been detected in significant amounts in environmental media (e.g., soil, surface waters, groundwater, air, biota) as well as in products or process streams. In such cases, EPA believes that the discovery of significant human and/or environmental exposure, when combined with the knowledge that the chemical or mixture is known or suspected to be capable of causing serious adverse health effects (e.g., cancer, birth defects, neurotoxicity) or serious adverse environmental effects (e.g., significant nontrivial toxicity in aquatic species), is clearly reportable under section 8(e) of TSCA. It is the exposure element of risk that is unknown to the Administrator in these cases, as opposed to the hazard element.

EPA believes, however, that because the overall scope of Part V(b)(1) may be unclear, this portion of the 1978 Policy Statement has been generally of limited use to the regulated community for determining when the detection of a chemical substance or mixture in environmental media must be reported under section 8(e) of TSCA. For example, while the introduction to Part V states that a "'substantial risk of injury to health or the environment' is a risk of considerable concern because of (a) the seriousness of the effect... and (b) the fact or probability of its occurrence," Part V(b)(1) does not mention the need to consider the substance's potential for harm to either human health or the environment; thus, the existing guidance could lead to over-reporting. Further, the title of Part V(b) ("Environmental effects") may be somewhat misleading in that Part V(b)(1) is intended to specifically address *non-emergency* reporting of information pertaining to environmental contamination (i.e., situations which do not require *immediate* action, but nevertheless reasonably support the conclusion of a substantial risk). Therefore, EPA is changing the title of Part V(b) to "Non-Emergency Situations of Chemical Contamination Involving Humans and/or the Environment, and Environmental Effects."

With regard to non-emergency environmental contamination information, EPA interprets section 8(e) to require reporting of information that provides evidence of widespread environmental distribution of a chemical substance or mixture, and which because of the extent, pattern, and amount of the contamination seriously threatens or may seriously threaten: (1) Humans with cancer, birth defects, mutation, death or serious or prolonged incapacitation (e.g., neurotoxicological effects, reproductive/developmental effects), or (2) non-human organisms with large-scale or ecologically significant population destruction. Thus, the mere presence of a chemical substance in an environmental media, absent some other relevant information as noted above, would not trigger reporting under section 8(e). Similarly, EPA believes that information concerning the detection of chemical substances properly contained within appropriate disposal facilities is not reportable under section 8(e).

The decision-making process for section 8(e) reporting of non-emergency situations involving environmental contamination and/or detection should include consideration of the toxicity of the chemical substance(s) involved. The greater or more serious the known or suspected toxicity of the detected chemical substance or mixture, the less heavily one should weigh the amount, extent, and pattern of the contamination by that chemical or mixture in determining whether to report the situation under section 8(e) of TSCA. Conversely, the greater the amount, extent, and pattern of the contamination, the less heavily one should weigh the known or suspected toxicity of the chemical(s).

EPA considered establishing chemical-specific quantities and/or concentrations to be used by members of the regulated community as benchmarks for determining TSCA section 8(e) reportability of non-emergency situations depending on the toxicity of the chemical(s) involved. EPA has presently rejected this approach because there is such a wide variety of possible exposure scenarios associated with a non-emergency chemical release or detection that no predetermined quantity or concentration of a chemical could accurately delineate whether or not a release or detection of that amount or concentration would reasonably support a conclusion of substantial risk of injury to health or the environment. A given quantity or concentration of a substance under one set of circumstances could pose a radically different risk than it would under other circumstances. Rather, EPA is providing general guidelines for persons to use for determining the reportability of non-emergency situations under TSCA section 8(e).

Under various authorities administered by EPA, the Agency has established benchmark amounts/concentrations for a limited number of chemical substances within TSCA jurisdiction. For example, under the Safe Drinking Water Act, EPA has established Maximum Contaminant Levels (MCLs) for certain chemicals. Under TSCA section 8(e), on the other hand, "substantial risk" reporting is affected by a consideration of the hazard(s) associated with the chemical substance, and the nature, pattern, and extent of the release. Therefore, EPA believes that under some circumstances, information concerning a non-emergency chemical release or detection in an amount less than the chemical's MCL could "reasonably support the conclusion of substantial risk," thus requiring reporting under TSCA section 8(e).

However, it has been suggested to EPA by persons subject to section 8(e) that information on releases of chemicals in amounts less than their

MCLs, or other objective reporting standards if developed by EPA, should never be considered for reporting under section 8(e) because EPA has already established an objective threshold. As indicated above, EPA has at this time rejected this approach. Comment is specifically solicited on the subject of section 8(e) reporting of releases or detections of chemicals in amounts or concentrations below values established by EPA under other environmental protection authorities.

It should be noted that Part V(b)(1) of the 1978 Policy Statement pertains specifically and solely to the fact that a non-emergency situation involving the release or detection of a chemical substance or mixture has been discovered. In other words, information regarding a non-emergency chemical release or detection event, in and of itself, regardless of whether effects were observed associated with that particular release or detection, may be reportable under Part V(b)(1) of the 1978 Policy Statement. If health or environmental effects as described under Part V (i.e., Part V introduction, Part V(a), and Part V(b)) of the 1978 Policy Statement are observed in conjunction with or subsequent to the non-emergency release or detection, and the released or detected chemical substance or mixture is strongly implicated as being the cause of those effects, a written report must be submitted to the Agency within 30 calendar days, regardless of the quantity or concentration of the substance involved; this written reporting requirement remains unchanged (with the exception of the change in the reporting deadline from 15 working days to 30 calendar days for written information discussed above in this Unit).

The term "widespread" contamination in the context of a non-emergency situation would include, for example, presence in a product that is distributed commercially, multiple (e.g., 3 or more) reports of contamination (even in a single environmental medium) involving different sites inside and/or outside the boundaries of a facility, or presence in more than one environmental medium (e.g., discovery of a chemical in both soil and groundwater). For instance, a situation involving a toxic chemical contamination that has or could spread beyond the boundaries of a plant site via groundwater, surface water, and/or air is of greater concern than a situation involving similar soil contamination in which, because of the soil type or other circumstances, there is little or no likelihood that the chemical will migrate. There are also non-emergency situations in which a significant chemical contamination is discovered inside physical structures within the plant site boundaries, which, when combined with other pertinent information (e.g., potential for exposure, toxicity of the chemical), can trigger section 8(e) reporting; examples include but are not limited to: (1) The detection of significant amounts of a toxic chemical substance in workplace air and/or on surfaces within a facility in which the chemical is typically handled in a closed system, and (2) the detection of significant levels of a toxic by-product not already generally known to be associated with a given chemical process, or known to be associated with the chemical process but found at levels significantly above those previously believed to be associated with that process.

B. Information That Need Not Be Reported

Part VII of the 1978 Policy Statement lists the circumstances under which information need not be reported to EPA pursuant to section 8(e). Specifically, Part VII of the 1978 Policy Statement indicates that information need not be reported to the Agency under section 8(e) of TSCA if it:

(a) Has been published by EPA in reports; (b) Has been submitted in writing to EPA pursuant to a mandatory reporting requirement under TSCA or any other authority administered by EPA (including the Federal Insecticide, Fungicide and Rodenticide Act, the Clean Air Act, the Federal Water Pollution Control Act, the Marine Protection, Research and Sanctuaries Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act), provided that the information (1) Encompasses that required by Part IX(c) through (f); and (2) is from now on submitted within the time constraints set forth in Part IV and identified as a section 8(e) notice in accordance with Part IX(b); (c) Has been published in the scientific literature and referenced by the following abstract services: (1) Agricola, (2) Biological Abstracts, (3) Chemical Abstracts, (4) Dissertation Abstracts, (5) Index Medicus, (6) National Technical Information Service; (d) Is corroborative of well-established adverse effects already documented in the scientific literature and referenced as described in (c) above, unless such information concerns emergency incidents of environmental contamination as described in Part V(c); or (e) Is contained in a notification of spills under section 311(b)(5) of the Federal Water Pollution Control Act.

Since 1978, there have been numerous Federal laws passed and/or amended and a large number of Federal regulations promulgated that are designed to gather chemical-related information. In recognition of the increased mandatory reporting of information under various laws administered, delegated, or authorized by EPA, EPA intends to revise paragraph (b) above so that a section 8(e) obligation is satisfied if emergencyinformation is reported immediately (i.e, as soon as the subject person has knowledge of the incident) and non-emergency information is reported within 30 calendar days on a mandatory basis to:

(1) EPA, under any Federal statute administered by EPA (including, but not limited to, the Toxic Substances Control Act; the Federal Water Pollution Control Act; the Clean Air Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Safe Drinking Water Act; the Marine Protection, Research and Sanctuaries Act; the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Pollution Prevention Act; the Emergency Planning and Community Right-to-Know Act (EPCRA));

(2) A State, under any Federal statute administered by EPA and delegated to that State (e.g., National Pollutant Discharge Elimination System (NPDES) permit requirements) (see example 1 below); or

(3) A State, under an EPA-authorized State program, which has been established pursuant to a Federal statute administered by EPA (e.g., an EPA-authorized State Resource Conservation and Recovery Act (RCRA) program).

The reporting exemptions under Part VII(b) do not pertain to information reported solely to a State or locality under a State or local law or a program not delegated or authorized by EPA, such as information reported solely to State and local emergency response committees under EPCRA. EPA believes that EPA approval and/or oversight of delegated and authorized programs provides a nexus to the EPA Administrator which is lacking under programs not authorized by EPA or delegated by the Agency to States.

EPA considered adopting the position that a section 8(e) reporting obligation would be considered satisfied if the information was reported within the specific time frame applicable to the federal authority or program cited in paragraphs (1), (2), and (3) above to which the submitter was subject. In view of the fact that the statutory language of TSCA section 8(e) requires that substantial risk information be reported "immediately," the Agency rejected this position because the time frames for mandatory reporting under the numerous authorities and programs cited above vary greatly and in some cases can exceed 6 months. Therefore, EPA at this time intends no change in its position that for EIECs, the obligation

to report under section 8(e) is satisfied if the mandatory reporting takes place immediately (i.e, as soon as the subject person has knowledge of the incident) under a Federal statute administered or delegated by EPA, or under a provision of an EPA-authorized State program. For non-emergency information, the obligation to report under section 8(e) of TSCA would be satisfied if the information is reported on a mandatory basis within 30 calendar days. This 30 calendar-day reporting period is a change from the current 15 working-day reporting period; it follows from the change discussed earlier in this Unit regarding the reporting deadline under Part IV of the 1978 Policy Statement for any written report of substantial risk information submitted under section 8(e).

Information that is not required to be reported under one of the above authorities, even if provided along with information required to be reported under that authority, remains subject to reporting under section 8(e) of TSCA.

Since issuing the 1978 Policy Statement, EPA has determined that there are certain circumstances not addressed in the 1978 Policy Statement in which information need not be reported under section 8(e). EPA typically has adequate access to such information, and EPA believes that reporting under the circumstances would result in an undue burden to the regulated community and an information review/processing burden to EPA which would outweigh any potential public benefit that might be obtained by requiring reporting of such information under section 8(e). Accordingly, EPA intends to change Part VII of the 1978 Policy Statement to indicate that information need not be reported under section 8(e) of TSCA if the information is obtained solely from one of the following sources:

1. An official publication or official report published or made available to the general public by EPA or another Federal agency (see example 2 below).

2. A scientific publication to which an EPA Headquarters library subscribes (see example 3 below) or that is referenced in a database, including one which is computerized, to which an EPA Headquarters library subscribes.

3. A data base, including one which is computerized, to which an EPA Headquarters library subscribes (see example 4 below).

4. A major written news publication (i.e., newspaper, news magazine, trade press) with national circulation in the U.S.

5. A radio or television news report broadcast nationally in the U.S. (see example 5 below).

6. A national public scientific conference or meeting held within the U.S., provided that the information is captured accurately by way of a meeting transcript, abstract, or other such record, and is cited in a bibliographic/abstract computerized data base, publication, or report of the type cited in paragraphs 1, 2, 3, 4, or 5 above within 30 days of obtaining such information (see example 6 below).

Regarding paragraphs 2 and 3 above, general information concerning the data bases and publications to which the EPA Headquarters libraries subscribe will be available from the source listed under **FOR FURTHER INFORMATION CONTACT** in this document. Specifically regarding paragraphs 4 and 5 above, EPA anticipates that information will be obtained from news publications with less than national circulation, or radio or television news reports broadcast only on a local, State, or regional level. In such cases, the information must be reported under section 8(e) of TSCA unless the subject person has actual knowledge that EPA has been adequately informed of such information through that or another source.

EPA maintains its position under Part VII(c) of the 1978 Policy Statement that information need not be reported under section 8(e) of TSCA if the information corroborates well established, serious adverse effects that are already documented. The term "corroborates," in the context of this particular reporting exclusion, means that the information essentially duplicates and/or confirms an existing and well-documented understanding of a serious adverse effect of a particular chemical substance or mixture. EPA has correctly received, and expects to continue to receive, substantial risk reports that show adverse effects of a more serious degree or of a different kind than are already established. In other words, the Agency expects subject persons to immediately consider reporting information on serious toxic effects (including but not limited to cancer, developmental, reproductive toxicity, or neurotoxicity) if, for example: such effects are substantially more serious in terms of the severity of the effects or the number of animals affected; occur within a significantly shorter time frame following exposure; occur via a different route of exposure; occur at a significantly lower dose or concentration; or occur in a different species, strain, or sex. Examples 7 through 10 below serve to illustrate the distinctions created by this particular reporting exclusion.

The following examples illustrate certain of the types of factors that persons should consider in determining the applicability of the exclusions described above:

Example 1. While filing a mandatory report with the State pursuant to its NPDES permit, Company A also notifies the State in writing that a recently conducted clinical study showed that a statistically or biologically significant number of male factory workers exposed to the effluent are sterile. Despite the fact that the company notifies the State, such reporting is not mandatory under the NPDES program and the company must consider the need to submit a timely written report to EPA under section 8(e) of TSCA.

Example 2. Company A receives a public copy of an official report from the U.S. Department of Housing and Urban Development (HUD). In reading the report, the company learns that one of the chemicals the company distributes in commerce has been strongly implicated as being the cause of chromosomal damage in humans. Company A determines that the information contained in the report is of the type that would be required for submission to EPA. However, Company A correctly decides that it need not report the information under section 8(e). Per Part VII(a)(1) of the section 8(e) Policy Statement as refined herein, because the information was obtained from an "official publication ... made available to the general public by ... another Federal agency" it would not be reportable under section 8(e).

Example 3. Company A conducts a 9–day inhalation study of Chemical X in rats and finds that the chemical causes paralysis. Company A decides that these toxicological findings on one of its imported chemicals should be published in the open scientific literature and sends a draft manuscript to a scientific journal to which an EPA Headquarters library subscribes. Upon publication, Company B, who is also an importer of Chemical X, reads the article pertaining to the 9–day inhalation study of Chemical X and determines correctly that although the neurotoxicologic findings in rats are of the type required for submission to EPA under TSCA section 8(e), no section 8(e) notice from Company B is required. As the result of its chemical screening activities, EPA discovers the published article concerning Company A's 9–day study. After investigating further, EPA determines that Company A should have reported their findings under section 8(e) of TSCA immediately upon

obtaining the information; although the study was ultimately published, Company A did not obtain the information from a scientific journal.

Example 4. Company A processes chemical X and has no toxicological information on the chemical. As Company A is searching a large commercial computerized data base to which EPA subscribes for available toxicological information on chemical X, it discovers an abstract that states that Chemical X produced blindness in rats following oral administration. Although this toxicologic effect is clearly of the type required for submission under section 8(e) of TSCA, Company A decides correctly that formal section 8(e) filing of the obtained toxicological information is not needed because the computerized data base from which the information was obtained is one to which an EPA Headquarters library subscribes.

Example 5. The Director of Toxicology from Company A is at home watching the national nightly news on the television. During the broadcast, she learns that a very large release of Chemical X just occurred at a chemical manufacturing site in a nearby State. Despite the fact that she knows that her company is also a major manufacturer of Chemical X, no report under TSCA section 8(e) is required because the information was obtained from a news report broadcast nationally.

Example 6. During a national public scientific meeting presentation on Chemical X showing that Chemical X caused a significant level of birth defects in rats, the Director of Toxicology for Company A learns from the speaker that the oral administration of Chemical Y (an intermediate in a manufacturing process at Company A) also caused a significant level of birth defects in rats. In checking the content of the printed presentation abstract, which was distributed publicly by the meeting sponsors prior to the meeting and has been cited in a computerized data base to which an EPA Headquarters library subscribes, the Director discovers that the printed abstract accurately and adequately describes only the toxicologic findings for Chemical X and not for Chemical Y. Under these circumstances, Company A decides correctly to report the findings for Chemical Y to EPA under section 8(e) of TSCA.

Example 7. Company A manufactures chemical X and tests the chemical in a chronic feeding study in mice. It is already well established and well documented publicly that chemical X can cause a significant number of malignant skin tumors in mice as the result of chronic dermal application. In the chronic feeding study, the company finds that chemical X causes a significant number of benign and malignant pancreatic tumors. Considering that the findings from the chronic feeding study differ in a major way from the already available information from the chronic dermal application study, the pancreatic cancer findings must immediately be considered for reporting to EPA under section 8(e) of TSCA.

Example 8. Company A manufactures chemical X and tests the chemical in a chronic skin-painting study in rats. It is already well-documented publicly that chemical X can cause malignant skin tumors at the application site in mice as the result of chronic dermal application. The company finds that chemical X causes a significant number of malignant skin tumors at the site of application in rats. In view of the fact that it is not wellknown or well-established that chemical X can cause cancer in rats following dermal application, Company A must immediately consider the need to report its findings under section 8(e).

Example 9. During the conduct of a 28–day dermal application study in rats, Company A finds that exposure to one of its products, Chemical X, results in hind-limb paralysis. By way of an article published previously in a scientific journal to which an EPA Headquarter library subscribes, the company is also aware that acute oral exposure to Chemical X results in frank neurotoxicologic effects in rats. Considering the fact that the route of exposure in Company A's study was different than the one used in the published study, Company A must immediately consider the need to report its findings to EPA under section 8(e) of TSCA.

Example 10. During the conduct of a chronic dermal application study in rats, Company A finds that exposure to Chemical X results in a significant number of animals with malignant bone tumors after only 12 to 18 months of exposure. By way of a formally published abstract contained in a data base to which an EPA Headquarters library subscribes, the company is also aware that the same type of tumors had been found in rats exposed dermally to the same doses of Chemical X but only after two years of dermal exposure. Considering the fact that in Company A's study, the time to onset of the bone tumors differs significantly from that cited in the previously conducted study, Company A should immediately consider the need to submit the 12 to 18 month findings under section 8(e) of TSCA.

IV. Confidentiality Claims

EPA considers information contained in a notice of substantial risk under TSCA section 8(e) to be health and safety information generally covered by the term "health and safety study," as defined at TSCA section 3(6). Under TSCA section 14(b), such information can be withheld from the public as confidential if it "discloses processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture [discloses] the portion of the mixture comprised by any of the chemical substances in that mixture."

TSCA section 3(6) defines a "health and safety study" to mean "any study of any effect of a chemical substance or mixture on health or the environment or on both, including the underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this Act."

In the legislative history of the Toxic Substances Control Act, the Conference Committee stated that "[i]t is intended that the term (health and safety studies) be interpreted broadly. Not only is information which arises as a result of a formal, disciplined study included, but other information relating to the effects of a chemical substance or mixture on health and the environment is also included. *Any data that bears on the effects of a chemical substance on health or the environment would be included.*" H.R. Rep. No. 94–1679, 94th Cong., 2nd Sess. 58 (1976) (Conference Report) (emphasis added). EPA believes that TSCA section 8(e) information, such as information or underlying data from designed controlled studies or reports concerning undesigned uncontrolled circumstances, is information that "bears on the effects of a chemical substance on health or the environment." Likewise, incident information, exposure studies, and their underlying data are considered to be information relating to the effects of a chemical substance or mixture on health and/or the environment.

Therefore, to the extent that information contained in a section 8(e) substantial risk report falls within the meaning of the term "health and safety study" under TSCA, it is subject to the same non-disclosure restrictions afforded TSCA "Confidential Business Information" (TSCA CBI), as provided by TSCA section 14(b) and its interpreting regulations.

EPA considers chemical identity to be part of, or underlying data to, a health and safety study. See, for example, 40 CFR 716.3 and 40 CFR 720.3(k). As such, chemical identity will be afforded CBI protection by the Agency and therefore protected from public disclosure only under the circumstances provided under TSCA section 14 and the interpreting regulations.

In September 1990, EPA initiated a CBI review program to ensure that CBI claims are made in conformance with TSCA section 14. To date, EPA has challenged numerous CBI claims contained in section 8(e) notices and other filings, and in most cases the filing has been amended by the data submitter. EPA urges persons submitting data under TSCA section 8(e) to observe the limitations imposed on CBI claims by section 14 and the applicable regulations at 40 CFR part 2, subpart B, in order to save both Agency and submitter resources.

V. Refined Policy Text

For the reasons set forth in this notice, EPA is soliciting comment on refinements to the 1978 Policy Statement, which would be amended to read as follows:

Statement of Interpretation of, and Enforcement Policy Concerning, Section 8(e) of the Toxic Substances Control Act

1. In Part II, by revising the note at the end of the Part to read as follows:

Note. — Irrespective of a business organization's decision to establish and publicize procedures described above, it is responsible for becoming cognizant of any "substantial risk" information obtained by its officers and employees, and for ensuring that such information is reported to EPA within 30 calendar days.

2. In Part IV, by revising the first paragraph to read as follows:

Requirement that a Person "Immediately Inform" the Administrator.

With the exception of certain information on emergency incidents of environmental contamination [see Part V(c)], a person has "immediately informed" the Administrator if information is received by EPA not later than the 30th calendar day after the date the person obtained such information. Supplementary information generated after a section 8(e) notification has been filed should be submitted in writing within 30 calendar days after the date such supplementary information is obtained. Reports must be made as required under Part IX. For emergency incidents of environmental contamination, a person must report the incident by telephone to the appropriate contact as directed in Part IX as soon as the person has knowledge of the incident. The report should contain as much of the information required by Part IX as is possible.

3. In Part V, by revising paragraph (b)(1) and adding the phrase "Environmental effects." to the beginning of each paragraph in (b)(2) through (b)(5) to read as follows:

(a) * * *

(b) *Non-Emergency Situations of Chemical Contamination Involving Humans and/or the Environment, and Environmental Effects* —(1) Non-emergency situations of chemical contamination involving humans and/or the environment. Information that pertains to widespread chemical contamination that is not an "emergency" situation under Part V(c) below, but which because of the extent, pattern and/or amount of the contamination seriously threatens or may seriously threaten (i) humans with cancer, birth defects, mutation, death, or serious or prolonged incapacitation (e.g., serious neurotoxicological effects, reproductive/developmental effects), or (ii) non-human organisms with large-scale or ecologically significant population destruction, is subject to reporting. The mere presence of a chemical substance in an environmental media, absent some other relevant information as noted above, would not trigger reporting under section 8(e). The known or suspected toxicity of the detected chemical substance(s) should be considered in conjunction with the extent, pattern, and amount of the contamination in determining whether to report such non-emergency information. The greater or more serious the toxicity of the subject chemical or mixture, the less heavily one should weigh the amount, extent, and/or pattern of the contamination. Conversely, the greater the amount, extent, and/or pattern of the contamination, the less heavily one should weigh the toxicity of the chemical(s) in determining the section 8(e)-reportability of that release or detection. Information concerning the detection of chemical substances contained within appropriate disposal facilities should not be reported under this Part.

(2) Environmental effects. * * *
(3) Environmental effects. * * *
(4) Environmental effects. * * *
(5) Environmental effects. * * *
* * * * *

4. By revising Part VII to read as follows:

VII. *Information Which Need Not Be Reported*

"Substantial risk" information need not be reported if it:

(a) Is obtained from one of the following sources:

1. An official publication or official report published or made available to the general public by EPA or another Federal agency.

2. A scientific publication to which an EPA Headquarters library subscribes or that is referenced in a data base, including one which is computerized, to which an EPA Headquarters library subscribes.

3. A data base, including one which is computerized, to which an EPA Headquarters library subscribes.

Note: Specifically regarding paragraphs (2) and (3) above, general information concerning the data bases and publications to which the EPA Headquarters libraries subscribe is available from the Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

4. A major written news publication (i.e., newspaper, news magazine, trade press) with national circulation in the U.S.

5. A radio or television news report broadcast nationally in the U.S.

Note: Specifically regarding paragraphs (4) and (5) above, EPA anticipates that information will be obtained from news publications with less than national circulation, or radio or television news reports broadcast only on a local, State, or regional level. In such cases, the information must be reported under section 8(e) of TSCA unless the subject person has actual knowledge that EPA has been adequately informed of such information through that or another source.

6. A national public scientific conference or meeting held within the U.S., provided that the information is captured accurately by way of a meeting transcript, abstract, or other such record, and has been cited in a bibliographic/abstract computerized data base, publication, or report of the type cited in paragraphs (1), (2), (3), (4), or (5) above within 30 days of obtaining such information.

(b) Corroborates (i.e., substantially duplicates or confirms) in terms of, for example, route of exposure, dose, species, strain, sex, time to onset, and severity, a well-recognized/well-established serious adverse effect for the subject chemical(s), unless such information concerns effects observed in association with emergency incidents of environmental contamination as described in Part V(c).

(c) Is information that is reported to EPA within 30 calendar days for non-

emergency information, or immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information, pursuant to a mandatory reporting requirement of any statutory authority that is administered by EPA (including, but not limited to, the Toxic Substances Control Act; the Federal Water Pollution Control Act; the Clean Air Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Safe Drinking Water Act; the Marine Protection, Research, and Sanctuaries Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act, the Pollution Prevention Act; the Emergency Planning and Community Right-to-Know Act).

(d) Is information that is reported to a State within 30 calendar days for non-emergency information, or immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information, pursuant to a mandatory reporting requirement under any Federal statute administered by EPA and delegated to that State (e.g., National Pollutant Discharge Elimination System (NPDES) permit requirements), or

(e) Is information that is reported to a State within 30 calendar days for non-emergency information, or immediately (i.e., as soon as the subject person has knowledge of the incident) for emergency information, pursuant to a mandatory reporting provision of an EPA-authorized State program established under a Federal statute administered by EPA.

5. By revising Part IX to read as follows:

IX. *Reporting Requirements*

Notices shall be delivered to the TSCA Document Receipt Office (TS-790), (Attn: Section 8(e) Coordinator), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

A notice should:

(a) Be sent by certified mail, or in any other way permitting verification of its receipt by the Agency,

(b) State that it is being submitted in accordance with section 8(e),

(c) Contain the job title, name, address, telephone number, and signature of the person reporting and the name and address of the manufacturing, processing, or distribution establishment with which the person is associated,

(d) Identify the chemical substance or mixture (including, if known, the CAS Registry Number),

(e) Summarize the adverse effects or risk being reported, describing the nature and the extent of the effects or risk involved, and

(f) Contain the specific source of the information together with a summary and the source of any available supporting technical data.

For emergency incidents of environmental contamination (see Part V(c)), a person shall report the incident to the Administrator by telephone as soon as he/she has knowledge of the incident (see below for appropriate telephone contacts). The report should contain as much of the information required by instructions (c) through (f) above as possible. Twenty-four hour emergency telephone numbers are:

Region I (Maine, Rhode Island, Connecticut, Vermont, Massachusetts, New Hampshire), (617) 223-7265.

Region II (New York, New Jersey, Puerto Rico, Virgin Islands), (201) 548-8730.

Region III (Pennsylvania, West Virginia, Virginia, Maryland, Delaware, District of Columbia), (215) 597-9898.

Region IV (Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida), (404) 347-4062.

Region V (Wisconsin, Illinois, Indiana, Michigan, Ohio, Minnesota), (312) 353-2318.

Region VI (New Mexico, Texas, Oklahoma, Arkansas, Louisiana), (214) 655-2222.

Region VII (Nebraska, Iowa, Missouri, Kansas), (913) 236-3778.

Region VIII (Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota), (303) 293-1788.

Region IX (California, Nevada, Arizona, Hawaii, Guam), (415) 744-2000.

Region X (Washington, Oregon, Idaho, Alaska), (206) 442-1263.

VI. Conclusion

EPA will consider public comments submitted in response to this Notice and will publish in the **Federal Register** refined guidance pertaining to the types of non-emergency chemical release and detection information that must be reported under section 8(e), the time frames for reporting section 8(e) information, and the types of information that need not be reported under section 8(e). Comments are also sought on any change in public reporting burden which would result from the revisions and clarifications to the 1978 Policy Statement as described herein. The refinements contained in this Notice will not be effective until after EPA issues them in final form.

EPA intends to publish the refined TSCA section 8(e) reporting policy in the Code of Federal Regulations.

Dated: July 2, 1993.

Victor J. Kimm,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 93-16547 Filed 7-12-93; 8:45 am]

BILLING CODE 6560-60-F

FEDERAL COMMUNICATIONS COMMISSION

Applications For Consolidated Hearing

1. The Commission has before it the following applications for a renewal of license for television station (WHSG(TV) and a new commercial television station.

Applicant, city, and state	File No.	MM Docket No.
A. Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network, Monroe, GA.	BRCT-911129KR	93-156
B. Glendale Broadcasting Company, Monroe, GA.	BPCT-920228KE	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Section 73.610—B
FAA—B
Comparative—A & B
Ultimate—A & B

3. If there is any non-standardized issue(s) in this proceeding, the full test of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Down Town Copy Center,

1919 M Street, NW., room 246, Washington, DC 20037. Telephone no. (202) 452–1422.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 93–16578 Filed 7–12–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Intercounty Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 6, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Intercounty Bancshares, Inc., Wilmington, Ohio; to acquire The Williamsburg Building and Loan Company, Williamsburg, Ohio, pursuant to § 225.25(b)(9) of the Board's Regulation Y, and to merge it with its wholly-owned subsidiary, The National Bank and Trust Company, Wilmington, Ohio.

2. Whitaker Bank Corporation of Kentucky, Lexington, Kentucky, and Whitaker Bancorp, Inc., Lexington, Kentucky; to acquire Whitaker Management Company, Lexington, Kentucky, and thereby engage in providing data processing and data transmission services to other pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Comments on this application must be received by July 22, 1993.

Board of Governors of the Federal Reserve System, July 7, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16519 Filed 7-12-93; 8:45 am]

BILLING CODE 6210-01-F

Internationale Nederlanden Group N.V.; Notice of Application to Engage de novo in Permissible Nonbanking Activities; Correction

This notice amends a previous notice (FR Doc. 93-8446) published at page 19107 of the issue for Monday, April 12, 1993.

Under the Federal Reserve Bank of New York heading, the entry for Internationale Nederlanden Group N.V. is amended to include the following activities:

In addition, Internationale Nederlanden Group N.V. also proposes to engage in underwriting and dealing in obligations of the United States, general obligations of States and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers' acceptances and certificates of deposit pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Comments on this application must be received by July 27, 1993.

Board of Governors of the Federal Reserve System, July 7, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16520 Filed 7-12-93; 8:45 am]

BILLING CODE 6210-01-F

Kentucky Bancshares Incorporated, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 6, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Kentucky Bancshares Incorporated, Russell, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Kentucky Bank & Trust of Greenup County, Russell, Kentucky.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Fortress Bancshares, Inc., Hartland, Wisconsin; to acquire 100 percent of the voting shares of Klossner Bancorporation, Inc., Houston, Minnesota. and thereby indirectly acquire Houston Security Bank, Houston, Minnesota.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. MNB Bancshares, Inc., Malvern, Arkansas; to acquire 100 percent of the voting shares of First Sheridan Bancshares, Inc., Sheridan, Arkansas, and thereby indirectly acquire First National Bank of Sheridan, Sheridan, Arkansas.

Board of Governors of the Federal Reserve System, July 7, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16521 Filed 7-12-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Technical Advisory Committee for Diabetes Translation and Community Control Programs: Change of Location

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 36690—dated July 8, 1993.

SUMMARY: Notice is given that the meeting location for the Technical Advisory Committee for Diabetes Translation and Community Control Programs has changed. The meeting times, dates, status, purpose, and matters to be discussed announced in the original notice remain unchanged.

ORIGINAL LOCATION: Embassy Suites Hotel-Atlanta Airport, 4700 Southport Road, College Park, Georgia 30349. (Exit 18 Riverdale Road off I–85)

NEW LOCATION: Atlanta Airport Hilton Hotel-Hapeville, 1031 Virginia Avenue, Atlanta, Georgia 30354. (Exit 19 Virginia Avenue off I–85)

CONTACT PERSON FOR MORE INFORMATION: Fredrick G. Murphy, Program Analyst, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, (K–10), Atlanta, Georgia 30341–3724, telephone 404/488–5005.

Dated: July 8, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention.

[FR Doc. 93–16643 Filed 7–12–93; 8:45 am]

BILLING CODE 4160–18–M

Symposium on Efforts To Prevent Injury and Disease in Agricultural Workers: Meeting.

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Symposium on Efforts to Prevent Injury and Disease in Agricultural Workers.

Time and Dates: 9 a.m.–6 p.m., August 25, 1993; 8:30 a.m.–5:30 p.m., August 26, 1993; 8:30 a.m.–11:30 a.m., August 27, 1993.

Place: Hyatt Regency Lexington, Regency Ballroom East, 400 West Vine Street, Lexington, Kentucky 40507.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to review efforts by NIOSH and its grantees in the prevention of injury and disease among agricultural workers and their families. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Timothy W. Groza, NIOSH, CDC, 1600 Clifton Road NE., Mailstop D–26, Atlanta, Georgia 30333, telephone 404/639–3341.

Dated: July 6, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16512 Filed 7–12–93; 8:45 am]

BILLING CODE 4160–19–M

Occupational Traumatic Injury Surveillance of Farmers (TISF) Project: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Occupational Traumatic Injury Surveillance of Farmers (TISF) Project.

Time and Date: 9 a.m.–12 noon, August 19, 1993.

Place: Prete Building, Large Conference Room, NIOSH, CDC, 3040 University Avenue, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to review the protocol for a proposed NIOSH study, "Occupational Traumatic Injury Surveillance of Farmers (TISF) Project." Individual viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: John R. Myers, M.S.F., NIOSH, CDC, 3040 University Avenue, Mailstop 1174, Morgantown, West Virginia 26505, telephone 304/284–5704.

Dated: July 6, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16511 Filed 7–12–93; 8:45 am]

BILLING CODE 4160–19–M

CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI): Subcommittee on Promoting Knowledge of Serostatus (Counseling, Testing, Referral, Partner Notification): Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meetings.

Name: CDC ACPHI Subcommittee on Promoting Knowledge of Serostatus (Counseling, Testing, Referral, Partner Notification).

Time: 8 a.m.–5 p.m.

Dates: July 30–31, 1993.

Place: Swissôtel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Time: 8 a.m.–5 p.m.

Dates: September 13–14, 1993.

Place: Swissôtel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to discuss policies and issues related to HIV-antibody counseling, testing, referral, and partner notification programs and services. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone 404/639–2918.

Dated: July 6, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–16513 Filed 7–12–93; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Supplemental Funds Awarded for the Summer of Service Program in Philadelphia

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of supplemental grants made for a demonstration program in the Philadelphia metropolitan area.

SUMMARY: The Health Resources and Services Administration (HRSA), Bureau of Primary Health Care (BPHC) and Bureau of Health Professions (BHPr), announces that fiscal year 1993 funds were awarded to programs in the Philadelphia metropolitan area to enhance their involvement in the Summer of Service (SOS) initiative. Although these funds were already awarded, HRSA is publishing this notice to inform the general public of this activity. Awards had to be made as soon as possible for the SOS objective to be achieved, since the SOS program is for a limited period of time—June 26 through August 21, 1993. Therefore, these grant applications were subject to the provisions of Part 119 of the PHS

Grants Administration Manual (GAM), "Applications for Projects with Time Constraints."

In conjunction with the Commission on National and Community Service, sponsor of the SOS initiative, HRSA has made available funding to enhance immunization activities of Bureau-funded programs that are included as a part of the SOS initiative. The SOS program will engage approximately 1,500 young people in serving the educational, health, public safety and environmental needs of children at-risk in urban and rural locations across the country this summer. The programs include innovative partnerships of municipalities, universities, community organizations, youth corps programs, health care facilities, and environmental organizations.

HRSA was invited by the Commission on National and Community Service to participate by enhancing the current activities of programs located in the 11 cities that received SOS funding. Of the 11, five cities incorporated a strong health component that included immunization activities. Of the five, Philadelphia was the only city in which BPHC-funded programs and BHPr-funded institutions played an integral role. For this reason, competition was limited to BPHC-funded programs located in the Philadelphia metropolitan area.

This limitation allows for the adequate development and analysis of a model national service program that, if successful, can be implemented in other cities. Both the Public Health Service (PHS) staff and grantees in Philadelphia actively participated in the planning and coordination of the SOS initiative, giving them unique background for the implementation and evaluation of this demonstration effort.

SUPPLEMENTARY INFORMATION:

Eligible Entities: Entities located in the Philadelphia metropolitan area and funded under sections 330, 340, and 340A of the PHS Act were eligible to apply for these grants.

Availability of Funds: A total of $200,000 was awarded to six Community Health Centers (funded under section 330 of the PHS Act) and one Public Housing Primary Care program (funded under section 340A of the PHS Act) in the Philadelphia area.

General Use of Grant Funds: Programs may use the Summer of Service grant dollars to:

- Hire and train students (ages ranging from 16–25) who act as outreach workers, health educators and spokespersons of health services in the community, with particular emphasis on immunization services; introduce students to health careers and hands-on career experience which focusses on the improvement of the health status of the community; utilize nursing and other health professions students to assist in administering immunizations; provide additional activities such as data entry and follow up of patients. Emphasis will be placed on hiring students from the community in which the program is located.
- Assist in the participation of program and supervisory staff in SOS training activities, including payment of salaries of staff who are associated with the training and/or supervision of the student workers, including compensation for activity beyond 100 percent effort, such as working weekends or evening hours.
- Develop or purchase print or audio-visual educational and training materials directed toward educating the community on immunizations and training student workers on immunizations, outreach techniques, and computer data entry. The use of such material will be for students exercises only and will not be used for public use without obtaining the appropriate Department clearances.
- Develop any other innovative programming the program proposes that will allow the students to be more effective in their roles in dealing with the community.

FOR FURTHER INFORMATION CONTACT: For information regarding the service component of SOS activities, contact Ms. Kelly Morton, Office of the Director, BPHC, Parklawn Building, room 7–05, 5600 Fishers Lane, Rockville, Maryland 20857 or by phone at (301) 443–2380. For information regarding the health professions training component of SOS activities contact Ms. Caroline Lewis, Office of Program Development, BHPR, Parklawn Building, room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857 or by phone at (301) 443–1530. For information on the coordination of activities within Philadelphia, contact the SOS Program Director, Patricia Gerrity, Associate Professor, La Salle University School of Nursing, Box 808, Philadelphia, Pennsylvania 19141 or by phone (215) 951–1430.

OTHER GRANT INFORMATION: It has been determined that the State of Pennsylvania does not participate in intergovernmental review of programs under Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs.

All grants awarded under this notice are subject to the Public Health System Reporting Requirements, and approved by the Office of Management and Budget (OMB) #0937–0195. Under these requirements, the community-based nongovernmental applicants were instructed to prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental applicants who are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date: (1) copy of the face page of the application (SF 424); and (2) a summary of the project (PHSIS), not to exceed one page, which provides a description of the population to be served, a summary of the services to be provided and a description of the coordination planned with the appropriate State or local health agencies.

The OMB Catalog of Federal Domestic Assistance number for each program is: Community Health Center program, 93.224; Health Care for the Homeless program, 93.151; Public Housing Primary Care program, 93.927; Educational Assistance to Individuals from Disadvantaged Backgrounds, 93.822; Nursing Educational Opportunities for Individuals from Disadvantaged Backgrounds, 93.178.

Dated: July 2, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–16476 Filed 7–12–93; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–4320–02–24 1A]

Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and scoping.

SUMMARY: The Department of the Interior through the Bureau of Land Management (BLM) gives notice of its intent to develop an environmental impact statement (EIS) pursuant to section 102(2)(e) of the National Environmental Policy Act of 1969. This EIS will analyze the effects of rangeland management reform, including proposed rulemaking. Comments and

suggestions are invited on the scope of the analysis. This notice also invites participation of affected Federal, State, and local agencies, as well as affected Indian tribes and other interested persons.

DATES: Written comments on the scope of the EIS will be accepted until July 23, 1993. Comments received after this date may not be considered in developing the EIS.

ADDRESSES: Scoping comments should be sent to: Bureau of Land Management, Division of Rangeland Resources (220), 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Write to the above address or call Dave Darby at (202) 208–4790; facsimile (202) 219–0902.

SUPPLEMENTARY INFORMATION: The last major revisions to 43 CFR part 4100, including the establishment of the current fee formula in regulations, occurred in 1988. Since then, new information on range practices and conditions has been generated by various studies, and General Accounting Office audits. These studies led to the following reports: Report of the Secretaries of Agriculture and the Interior, Grazing Fee Review and Evaluation Update of the 1986 Final Report; Grazing Fee Review and Evaluation Final Report, 1979–1985; and 1966 Western Livestock Grazing Survey. Many of the changes to be proposed address the findings of these studies.

The BLM administers approximately 165,000,000 acres of public lands, primarily in the western United States, for livestock grazing. There are more than 20,000 operators grazing livestock on these public lands. The Department intends to initiate a proposal for rangeland reform, including specific regulatory language. These proposed changes may constitute a major Federal action significantly affecting the quality of the natural and human environment. Possible alternatives to be considered are no action, different fee formulas, and various rangeland management and livestock grazing administration practices.

The Forest Service, U.S. Department of Agriculture, will be a cooperating agency in the preparation of this EIS in accordance with Council on Environmental Quality regulations (40 CFR 1501.6 and 1508.5) for the purpose of making an agency decision related to the establishment of a formula for calculating grazing fees.

This EIS will address several areas of rangeland management reform, including, but not limited to: The Federal grazing fee, subleasing, unauthorized use (trespass), affected interest, suspended and extended non-use, placing decisions in full-force and effect, debarment, issuing grazing preference and permits, prohibited acts, permit or lease tenure, grazing advisory boards, range improvement ownership, establishment of an ecosystem framework for rangeland management, and establishment of National Standards and Guidelines for Grazing.

The Secretary of the Interior during June 1993 conducted public meetings in the West to obtain public views on the grazing program. Although they were not part of the formal scoping process, the Bureau of Land Management will consider the views expressed in these meetings. These meetings were held in the following locations:

April 30, 1993: Bozeman, Montana
May 1, 1993: Reno, Nevada
May 5, 1993: Grand Junction, Colorado
May 6, 1993: Albuquerque, New Mexico
July 9, 1993: Flagstaff, Arizona

Carson W. Pope,

Acting Director, Bureau of Land Management.

[FR Doc. 93–16575 Filed 7–12–93; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Reestablishment of the Royalty Management Advisory Committee

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of reestablishment.

SUMMARY: The Secretary of the Interior (Secretary) is reestablishing the Royalty Management Advisory Committee (RMAC) Charter, which expired February 25, 1993. The new Charter will terminate in 2 years. This reestablishment is required to allow RMAC to comment on the development of new royalty management policies and procedures. This Notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and this reestablishment action has been reviewed and concurred with by the Administrator of the General Services Administration.

FOR FURTHER INFORMATION CONTACT: Jim Shaw, Minerals Management Service, Associate Director for Royalty Management, Denver Office, Denver Federal Center, Building 85, P.O. Box 25165, Denver, CO, 80225, telephone number (303) 231–3058.

SUPPLEMENTARY INFORMATION: The RMAC was initially chartered in August 1985 and subsequently rechartered twice with the last Charter expiring on February 25, 1993. It is a viable mechanism for the Department of the Interior to solicit the viewpoints of organizations most affected by Royalty-related policies. The RMAC, as representatives of MMS constituencies, provides advice and recommendations on proposed changes for improvement of the Royalty Management Program that have been and are of continuing interest to States, Indian tribes, Indian allottees, and industry. The RMAC consists of members representing the diversified interests of these groups. The Department has no other capabilities to meet these objectives through other organizations or committees.

Certification: I hereby certify that the Royalty Management Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by numerous legislative requirements, most recently by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*). Significant and continuing statutory requirements can also be found in the Allotted Lands Indian Leasing Act of May 11, 1938 (25 U.S.C. 396 *et seq.*), the Tribal Lands Leasing Act of May 11, 1938 (25 U.S.C. 396a *et seq.*), the Minerals Lands Leasing Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), the Submerged Lands Act of 1953 (43 U.S.C. 1301 *et seq.*), the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331 *et seq.*) as amended in 1978 (43 U.S.C. 1801 *et seq.*), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711).

Dated: July 6, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93–16526 Filed 7–12–93; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub. #351X)]

Exemption and Interim Trail Use or Abandonment; Burlington Northern Railroad Co.; in St. Cloud, Stearns County, MN

Decided: July 7, 1993.

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 2.86-mile line of railroad between milepost 59.50 and milepost 62.45 in St. Cloud, Stearns County, MN.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead

traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7, 49 CFR 1105.8, 49 CFR 1105.11, 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

On May 17 and May 20, 1993, prior to the filing of the notice of exemption, the City of St. Cloud, MN, filed a statement indicating its willingness to assume financial responsibility for interim trail use and rail banking of the line pursuant to the National Trails System Act (Trails Act), 16 U.S.C. 1247(2), and the Commission's implementing regulations at 49 CFR 1152.29. By letter filed on June 3, 1993, BN responded that it was amendable to issuing a notice of interim trails use once the notice of exemption is filed.

While a request for interim trail use need not be filed until 10 days after the date of the notice of exemption is published in the **Federal Register** [49 CFR 1152.29(b)(2)], the provisions of 16 U.S.C. 1247(d) are applicable and all of the criteria for imposing interim trail use/rail banking have been met. Accordingly, in light of BN's willingness to enter into negotiations, an NITU will be issued under 49 CFR 1152.29. The parties may negotiate an agreement during the 180-day period prescribed below. If no agreement is reached within 180 days, BN may fully abandon the line. See 49 CFR 1152.29(d)(1).

The City of St. Cloud's filing of a trail use request does not preclude other parties from filing interim trail use requests within 10 days after the publication of the notice of this exemption in the **Federal Register**. *See* § 1152.29(a). Any other political subdivision, state or qualified private entity interested in acquiring or using the involved right-of-way for interim trail use/rail banking may file an appropriate request by July 23, 1993. BN is directed to respond to all such requests. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The City of St. Cloud alternatively requests the imposition of a 180-day public use condition precluding BN from disposing of the real estate to any entity other than a public user. Moreover, it requests that BN retain for 180 days from the effective date of the abandonment all structures (e.g., bridges, trestles, tunnels) on the right-of-way that are necessary for future recreational trail use, unless the real estate is sold or transferred to a public user.

A request for a public use condition must conform with 49 CFR 1152.28(a)(2) and, as specified there, it must set forth: (1) The condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the time period. Because the potential trail user has met these criteria, a 180-day public use condition will also be imposed. We note that a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 12, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 23, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 2, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Esq., Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

If the notice contains false or misleading information, the exemption is void *ab initio*.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by July 16, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered:

1. Subject to the conditions set forth above, BN may discontinue service, cancel tariffs for this line on not less than 10 days' notice to the Commission, and salvage track and related material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice of exemption and NITU by date and docket number.

2. The abandonment of the above-described line is subject to the condition that BN leave intact the right-of-way, including all bridges, trestles, culverts, tunnels, and other similar structures (but not track or track materials), for a period of 180 days from the effective date of this exemption, to enable any State or local government agency or other interested person to negotiate the acquisition of the line for public use.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of any liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify BN against any potential liability) and the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service.

5. If the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after publication of this notice, interim trail use may be implemented. If no agreement is reach by the 180th day, BN may fully abandon the line.

7. Provided no formal expression of intent to file an offer of financial assistance has been received, this notice of exemption and NITU will be effective August 12, 1993.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-16527 Filed 7-12-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-343 (Sub-No. 2X)]

Wisconsin Department of Transportation—Abandonment Exemption—In Winnebago County, WI

[Docket No. AB-383 (Sub-No. 1X)]

Wisconsin & Southern Railroad Co.—Discontinuance Exemption—In Winnebago County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by the Wisconsin Department of Transportation and the discontinuance of service by Wisconsin & Southern Railroad Co. of 2.1 miles of the Oshkosh Subdivision rail line extending between mileposts 185.6 and 187.7 in Oshkosh, Winnebago County, WI, subject to environmental and standard labor protective conditions. The transactions are also exempted from the offer of financial assistance and public use procedures of 49 U.S.C. 10905 and 10906, respectively.

DATES: This exemption will be effective on July 13, 1993. Petitions to reopen must be filed by August 7, 1993.

ADDRESSES: Send pleadings referring to Docket Nos. AB-343 (Sub-No. 2X) and AB-383 (Sub-No. 1X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) John D. Heffner, Gerst, Heffner, Carpenter & Precup, 1700 K Street, NW., Suite 1107, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610. (TDD for hearing impaired: (202) 927-5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5271.)

Decided: June 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-16528 Filed 7-12-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Notice of Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with the Federal Advisory Committee Act (FACA) Pub. L. 92-463. Pursuant to section 10(a) of FACA, this is to announce that the Commission will meet at the time and place shown below.

TIME AND PLACE: The meeting will be held on Wednesday, July 28, 1993 from 10 to 4:30 p.m. Conference Room N-3437 A-D in the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows: Five or six presentations of workplace committees and other forms of participation drawn from:

- Large and small enterprises;
- Manufacturing and service industries; and
- Workplaces under collective agreements and workplaces with no collective agreements.

PUBLIC PARTICIPATION: The Commission will be in session from 10 a.m. to 12 noon when it will recess for lunch and will return at 1 p.m. Seating will be available to the public on a first-come, first-serve basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 11 copies to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-2318, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, room C-2318, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219-9148.

Signed at Washington, DC, this 7th day of July 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93-16548 Filed 7-12-93; 8:45 am]

BILLING CODE 4510-23-M

Glass Ceiling Commission; Notice of Meeting

SUMMARY: Pursuant to title II of the Civil Rights Act of 1991 (Pub. L. 102-166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92-462, 5 U.S.C. app. II) a Notice of Establishment of the Glass Ceiling Commission was published in the Federal Register on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place Thursday July 29, 1993. The purpose of the Commission is to, among other things, focus greater attention to the importance of eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into the practices, policies and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which women and minorities are promoted to management and decisionmaking positions, and businesses and industries in which women and minorities are not promoted to such positions; and (c) recommending measures designed to enhance opportunities for and the elimination of artificial barriers to the advancement of women and minorities to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on Thursday, July 29, 1993, from 9-12 Noon and 1:30 p.m. to 4 p.m. in Room C-5310, Seminar Room 1B, of the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows:

(1) Remarks by Secretary of Labor Reich;
(b) Brief remarks from Commissioners;
(c) Discussion of Commission workplan;
(d) Criteria for Frances Perkins-Elizabeth Hanford Dole Award; and
(e) Ancillary considerations attendant to carrying out Commission activities.
(f) Public comments—time permitting.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available to the public on a first-come, first-serve basis—seats will be reserved for the media. Disabled individuals should contact the Commission no later than July 20 to request accommodation for their disability. Individuals or organizations wishing to submit written statements should send ten (10) copies to Ms. Joyce Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210. Written statements must be received on or before July 26, 1993, to be included in the record of the meeting. Any member of the public who wishes to speak at this meeting should indicate, in advance, the nature of the intended presentation. The amount of time for each presentation will be limited to no more than five minutes.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, S–2233, Washington, DC 20210, telephone number (202) 219–7342.

Signed at Washington, DC, this 7th day of July, 1993.

Robert Reich,

Secretary of Labor.

[FR Doc. 93–16549 Filed 7–12–93; 8:45 am]

BILLING CODE 4510–23–M

Occupational Safety and Health Administration

[Docket No. NRTL–1–89]

ETL Testing Laboratories, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of expansion of current recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the Agency's final decision on the ETL Testing Laboratories, Inc. application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

ETL Testing Laboratories, Inc. (ETL), previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35763), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 54 FR 8411, 2/28/89), and was so recognized (see 54 FR 37845, 9/13/89).

ETL subsequently applied for an expansion of its initial recognition as a Nationally Recognized Testing Laboratory. After the procedural requirements outlined in 29 CFR 1910.7, Appendix A were fulfilled, ETL's recognition was expanded to include 29 additional test standards (product categories) (See 54 FR 37845, 9/13/89; 55 FR 51971, 12/18/90; as corrected 56 FR 2953, 1/25/91).

ETL submitted a second request to further expand its recognition as a Nationally Recognized Testing Laboratory pursuant to 29 CFR 1910.7. This request was reviewed by the Agency and a notice of the request for expansion and request for comments was published in the **Federal Register** on November 18, 1992 (57 FR 54422; see Exhibit 19).

There were two responses to this **Federal Register** notice of application and preliminary finding. Both respondents supported the expansion of ETL's recognition as an NRTL. (See Exhibits 20–1 and 20–2.)

It is OSHA's determination that ETL Testing Laboratories, Inc. has demonstrated that it can adequately test and certify products under the requested test standards.

Notice is hereby given that ETL's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the test standards (product categories) listed below.

Copies of all pertinent documents (Docket No. NRTL–1–89), are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210.

The addresses of the laboratories covered by this recognition are: ETL Testing Laboratories, Inc., Cortland Safety Division, Industrial Park, Cortland, New York 13045, ETL Testing Laboratories, Inc., 5855–P Oakbrook Parkway, Norcross, Georgia 30093, ETL Testing Laboratories, Inc., West Coast Division, 660 Forbes Boulevard, South San Francisco, California 94080.

Final Decision and Order

Based upon the facts found as part of the ETL Testing Laboratories, Inc. original recognition, including details of necessary test equipment, procedures, and special apparatus or facilities needed, adequacy of the staff, the application(s), documentation submitted by the applicant (see Exhibits 18 A and 18 B), comments submitted by the public, and the OSHA staff finding including the original On-Site Review Report, as well as the evaluation of the current request (see Exhibit 18 C), OSHA finds that ETL Testing Laboratories, Inc. has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the ETL Testing Laboratories, Inc. recognition is hereby expanded to include the 62 additional test standards (product categories) cited below, subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following 62 additional test standards for the testing and certification of equipment or materials included within the scope of these standards.

ETL has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 96—Lightning Protection Components
ANSI/UL 198B—Class H Fuses
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuses for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Uses
ANSI/UL 198M—Mine-Duty Fuses
ANSI/UL 207—Refrigerant Containing Components and Accessories, Nonelectrical

ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 353—Limit Controls
ANSI/UL 372 [1]—Primary Safety Controls for Gas- and Oil-Fired Appliances
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Copper Conductors
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 719—Nonmetallic Sheathes Cables
ANSI/UL 781 [2]—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
UL 810—Capacitors
ANSI/UL 859—Personal Grooming Applicances
ANSI/UL 877 [2]—Circuit Breakers and Circuit-Breaker Enclosures for Use in Hazardous (Classified) Locations
ANSI/UL 886 [2]—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 900—Test Performance of Air-Filter Units
ANSI/UL 983—Surveillance Cameras
UL 1022—Line Isolated Monitors
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC Power Circuit Breakers Used in Enclosures
ANSI/UL 1277—Electrical Power and Control Tray Cables with Optional Optical-Fiber Members
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1446—Systems of Insulating Materials—General
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry-Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
UL 1594—Sewing and Cutting Machines
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
UL 1778—Uninterruptible Power Supply Equipment
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1917—Solid-State Fan Speed Controls
UL 1995—Heating and Cooling Equipment
ANSI/IEEE C37.20.1—Metal-Enclosed Low Voltage Power Circuit Breaker Switchgear
ANSI/IEEE C37.20.2—Metal-Clad and Station-Type Cubicle Switchgear
ANSI/IEEE C37.20.3—Metal-Enclosed Interrupter Switchgear
ANSI/ISA S12.12 [2]—Electrical Equipment for Use in Class I, Division 2, Hazardous (Classified) Locations

[1] Testing and certification is limited to equipment designed for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

[2] Testing and certification is limited to Class I locations.

Note: The use of ANSI/UL 913—"Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous Locations", for which ETL has previously received recognition for the testing and certification of products, is hereby also limited to Class I, Division I locations.

ETL Testing Laboratories, Inc. must also abide by the following conditions of this expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to ETL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ETL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ETL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ETL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ETL shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

ETL will continue to meet the requirements for recognition in all areas where it has been recognized; and

ETL will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on July 13, 1993, and will be valid for a period of five years from the date of the original recognition, September 13, 1989, until September 13, 1994, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington DC, this 6th day of July, 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93-16550-1 Filed 7-12-93; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. NRTL-2-91]

GTE TestMark Laboratories

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Request for additional comments on the GTE TestMark Laboratories' application for recognition as a nationally recognized testing laboratory.

SUMMARY: This notice re-opens the record for additional comments concerning whether GTE TestMark Laboratories can meet the independence requirement for recognition as a nationally recognized testing laboratory (NRTL) under 29 CFR 1910.7.

DATES: Additional comments must be submitted by August 12, 1993.

ADDRESS: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Henry Woodcock, Acting Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

A Notice of Application for the recognition of GTE TestMark Laboratories (TML) for recognition as a nationally recognized testing laboratory (NRTL) and Preliminary Finding was published in the **Federal Register**, July 8, 1992 (57 FR 30235). The American Council of Independent Laboratories, Inc. (ACIL), raised several issues concerning the independence of GTE TestMark and opposed the Laboratory's application for recognition (Exhibit 4–1). OSHA is requesting additional comments on the independence issue before determining whether GTE TestMark Laboratories is eligible for recognition as an NRTL.

II. Issues Raised by Comments

ACIL raised several issues concerning GTE TestMark Laboratories' application for recognition as an NRTL. Most of ACIL's concerns were investigated and answered by TML. However, the Agency believes that the independence issue raises novel questions of regulatory interpretation and policy. The Agency has decided that it would be beneficial to solicit additional public comment on whether GTE TestMark Laboratories can meet the independence requirement in 29 CFR 1910.7. The full texts of both the ACIL comment letter (Exhibit 4–1), and the TML response, are reproduced as Appendix A below.

A. Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturers, vendors and users of equipment or materials being tested. This independence requirement is necessary to assure the integrity of the testing activities.

In its application for recognition as an NRTL, TML stated:

> GTE Service Corporation is not actively engaged in the manufacture of equipment of the type contemplated for testing under this application. While GTE affiliates are engaged in manufacturing, TML will not test their products for the purpose of listing. TML is not owned or controlled by a manufacturer of equipment * * * Security of employment for lab employees is not under the influence or control of manufacturers or suppliers (Ex. 2.A.).

ACIL questioned TML's independence status and suggested three reasons why GTE TestMark Laboratories had failed to meet the independence criteria set forth in 29 CFR 1910.7(b)(3).

First, ACIL claimed that TML was not completely independent of employers subject to the tested equipment requirements because its parent, GTE Telephone Operations, is a user of the tested equipment. TML's application for NRTL recognition states that "GTE TestMark Laboratories is owned by the GTE Service Corporation and is part of the GTE Telephone Operations, which provides telecommunications services in many States and two foreign countries." According to ACIL, GTE Telephone Operations is TML's immediate parent and as a service provider it procures and uses telecommunications equipment. Therefore, TML cannot be an NRTL because its parent, GTE Telephone Operations, is subject to the requirements as a user of tested equipment. ACIL expressed concern that if NRTL status is granted, TML would be testing equipment used by its parent or a competitor that provides similar service. According to ACIL, this could present a potential conflict of interests.

Second, ACIL argued that TML is not completely independent of any manufacturer of equipment or materials being tested because TML stated in its application that it has affiliates that are engaged in manufacturing. TML's application for NRTL recognition states "While GTE affiliates are engaged in manufacturing, TML will not test their products for the purpose of listing." According to ACIL, a relationship described as "affiliates" does not constitute complete independence. Moreover, ACIL expressed concern that although testing may not be done for GTE, cases may arise when TML could be testing a product with parts from GTE or one of GTE's subsidiaries, suppliers or customers. It is ACIL's opinion that the complexity of product manufacturing contributes to the likelihood that TML will be placed in a compromising position of testing a GTE or GTE-related part. Therefore, according to ACIL, TML's disclaimer that it will not test the affiliates products cannot be guaranteed.

Third, ACIL expressed concern about TML's testing of non-GTE manufacturer's products. According to ACIL, the "affiliation" of TML with GTE compromises TML's ability to fully scrutinize another manufacturer's products or leaves margin for bias.

OSHA has considered ACIL's comments and believes they may have merit. In addition to the issues raised by ACIL, the Agency is concerned about the organizational structure of GTE Service Corporation and GTE TestMark Laboratories. The organizations appear to have "interlocking" corporate officers and this too many constitute a potential conflict of interest and be contrary to the independence requirement in 29 CFR 1910.7. The Agency is concerned that in some cases such an arrangement may compromise the ability of the laboratory to produce test results which are objective and unbiased and might adversely impact the independence of GTE TestMark Laboratories.

OSHA believes that further consideration is necessary at this point and is inviting the public to submit additional comments or information concerning the degree of independence of the applicant and whether it is independent within the meaning and spirit of 29 CFR 1910.7.

III. Requests for Comments and Information

In light of the above discussion OSHA solicits additional comments on GTE TestMark Laboratories' application for recognition as an NRTL. The Agency is particularly interested in receiving comments regarding whether GTE TestMark Laboratories can meet the requirement for independence required under 29 CFR 1910.7. OSHA also specifically requests comments on the following questions:

(1) What conditions are required for a laboratory to be considered independent from manufacturers, suppliers, vendors, and users of the products it tests? What criteria should be used to determine independence within the meaning of 29 CFR 1910.7?

(2) Can a laboratory be considered independent if its parent organization manufactures products of a type which it is accredited to test and certify even where the laboratory agrees not to certify any products from the parent organization or its affiliates?

(3) Does the act of certifying products that are manufactured by an affiliated or parent organization's potential competitor mean that the laboratory cannot be considered independent?

Copies of the TML application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–2–91), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Authority and Signature

This document was prepared under the direction of David C. Ziegler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655).

Signed at Washington, DC this 6th day of July , 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93-16551 Filed 7-12-93; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. NRTL-1-88]

MET Laboratories, Inc.

AGENCY: Ocupational Safety and Health Administration, Department of Labor.

ACTION: Notice of request for expansion of current recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the application of MET Laboratories, Inc. (formerly MET Electrical Testing Company, Inc./Laboratory Division), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is August 12, 1993.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given that MET Laboratories, Inc. (formerly MET Electrical Testing Company, Inc./Laboratory Division) which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1-83 (48 FR 35763), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 53 FR 49258, 12/6/88), and which was so recognized (see 54 FR 21136, 5/16/89), has made application for an expansion of its current recognition, for the equipment or materials listed below.

The address of the concerned laboratory is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

Expansion of Recognition

MET Laboratories, Inc. (MET), submitted an application for expansion of its current recognition (Ex. 13), to include the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

UL 763—Motor-Operated Commercial Food Preparing Machines

ANSI/UL 859—Personal Grooming Appliances

ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays

The NRTL Recognition Program staff made an in-depth study of the details of MET's original recognition and application and determined that MET had the staff capability and the necessary equipment to conduct testing of products using the proposed test standards. The NRTL staff determined that an additional on-site review was not necessary since the proposed additional test standards were closely related to MET's current areas of recognition.

Preliminary Finding

Based upon a review of the details of MET's recognition and an evaluation of its present application including details of necessary test equipment, procedures, and special apparatus or facilities needed, the Assistant Secretary has made a preliminary finding that the equipment and expertise required to certify products using the three aforementioned standards are within the capabilities of the laboratory, and that the proposed additional test standards (product categories) can be added to MET's recognition without the necessity for an additional on-site review.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the expansion of the current recognition of MET Laboratories, Inc., as required by 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than August 12, 1993, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210.

Copies of all pertinent documents (Docket No. NRTL-1-88), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.D. Department of Labor, at the above address.

Signed at Washington, DC, this 6th day of July, 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93-16552 Filed 7-12-93; 8:45 am]

BILLING CODE 4510-26-M

[Docket No. NRTL-3-90]

Southwest Research Institute

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the Agency's final decision on the application of the Southwest Research Institute for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the Southwest Research Institute (SwRI), which made application for recognition pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The address of the laboratory covered by this recognition is: Southwest Research Institute, 6620 Culebra Road, Post Office Drawer 28510, San Antonio, Texas 78228.

Background

The Southwest Research Institute is a non-profit organization which was established in 1947 and devoted to industrial research. The Department of Fire Technology in the Chemistry and Chemical Engineering Division has been engaged in various aspects of fire technology for over 35 years, including the testing and certification of various products that are the subject of this recognition. Laboratory-scale apparatus, designed to meet up to 40 test specifications, are housed in 11,100 square feet of laboratory space within the 23,200 square feet of floor space of the Department's facilities on the west campus of the Institute.

The Department of Fire Technology has been recognized by the Council of American Building Officials (CABO) National Evaluation Service as a third-party quality assurance and inspection

agency. The SwRI staff has also participated with numerous organizations and committees addressing a variety of aspects of fire technology.

The Southwest Research Institute applied to OSHA for recognition as a Nationally Recognized Testing Laboratory in May 1990. Additional data was submitted as requested. An on-site evaluation was conducted on February 6th and 7th, 1991, and the results discussed with the applicant who responded [Ex. 3A(2)] with appropriate corrective actions and clarifications to recommendations made as a result of the survey [Ex. 3A(1)] accomplished prior to the preparation of the final report. This final on-site review report (Ex. 3A) consisting of the on-site evaluation of SwRI's testing facilities and administrative and technical practices, and the corrective actions taken by SwRI in response to these evaluations, and the OSHA staff recommendation, were subsequently forwarded to the Acting Assistant Secretary for a preliminary finding on the application. A notice of SwRI's application together with a positive preliminary finding were published in the **Federal Register** on July 8, 1992 (57 FR 30237–30239). There were no responses to this **Federal Register** notice of the SwRI application and preliminary finding (Docket No. NRTL–3–90).

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review report indicates that SwRI does have testing equipment and facilities appropriate for the areas of recognition it seeks. The laboratory has more than 200 pieces of test equipment available to perform the testing required by the standard. If equipment is not available, it may be obtained from other departments.

SwRI's laboratory has adequate floor space for testing and evaluation and an adequate number of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks. The Fire Technology Department owns ten buildings on a 5-acre site. The total acreage of Southwest Research is approximately 765 with more than 1.5 million square feet of laboratory space. The Fire Technology Department has a total floor space of 23,200 square feet of which some 11,000 square feet of space has been allocated for product testing and evaluation.

Environmental conditions in the laboratory are controlled by a central heating, air conditioning, and ventilation system designed for the type of testing performed in the laboratory. Environmental chambers are used to control and monitor environmental conditions for specific product testing. Although the laboratory has no security alarm system, the main entrance to the Department is monitored during normal working hours by a receptionist. Visitors are required to identify themselves and are issued a visitor's tag. Access and egress to SwRI grounds is controlled by security personnel at a main guard building and grounds are patrolled during and after working hours.

The applicant employs some 32 people at the laboratory site, of whom 21 are currently involved in testing and evaluation to the product standards listed. Key personnel include eight technicians, and 10 engineers and supervisors.

OSHA has determined that the Southwest Research Institute has appropriate written test procedures, and calibration and quality control programs to enable it to adequately perform appropriate testing.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system. Southwest Research Institute meets these criteria.

SwRI's application as well as the on-site review report indicate that SwRI does maintain effective procedures for producing creditable findings and reports that are objective. The laboratory maintains a system for identifying product samples submitted for testing to ensure that there is no confusion regarding the identity of the samples. Samples checked are marked and logged in on a permanent record.

The Fire Technology Department has a number of standard operating procedures (SOPs) and a Quality Assurance Manual (QA Manual) in place, to be used by SwRI personnel in evaluating products for a standard or standards. These SOPs are developed through use of the guidelines in the QA Manual. The Project Manager is responsible for preparing, in writing, the SOP to be followed, which are to be followed by all laboratory personnel. This SOP is reviewed by the Safety Officer, the Section Manager, the Director of the Department of Fire Technology, and the Vice President of the Chemistry and Chemical Engineering Division. An internal audit group is responsible for the review of SOPs, records, and correspondence.

Product samples submitted for testing are logged in by technicians on a general material receipt form. The project number is marked on each sample and the sample is logged in by project number, client, address, date, weight and measurements. Deviations from the test specified in the standards are evaluated by the test engineer and test manager and are documented in the final report. Tests are conducted in compliance with the specified test standards. The test technician examines the sample in accordance with the dimensional limits of the standard and checks that the samples are undamaged.

The Project Manager, Department Director and Vice President are responsible for developing, reviewing and approving the standard test procedures. The test procedures are reviewed, as needed, by laboratory management. The laboratory performs all product testing in-house and does not subcontract any of the testing specified in the standards.

Test data sheets have been developed for most of the testing performed at the laboratory. A test data sheet which was reviewed (selected as representative of department standards) was found to reference the standard used, client name, project number, test date, test material ID, test data and results, and signatures of the individuals conducting the test. Test data sheets have been developed for all testing performed by the laboratory under the NRTL program.

Where applicable, a final report on the program describing the methods used and the results achieved is provided by the Department. This formal report includes the following:

The title and number of the standard used to evaluate the product, laboratory report number and the manufacturer's name and address;

An introductory section describing the product as it was evaluated; and

A test procedure, test results and observations during and after test sections.

The Project Manager authors the test report which is reviewed for technical content and accuracy by the appropriate

Section Manager and the Director of the Department of Fire Technology. The final report contains at least two signatures: the Vice President and/or Department Director and Project Manager.

Copies of the report are given to the client and to the Project Manager and are maintained in both the Department and Record Files.

Where disagreements occur between the client and the laboratory relating to evaluations, inspections, and/or testing, the client may, without prejudice, submit his views to the appropriate SwRI manager for discussion. Any further disagreement will be brought before the senior staff of the Department of Fire Technology for review and discussion. If necessary, these discussions will include the client's input and participation. If a resolution of differences cannot be obtained, either party shall have the right to cancel the certification program.

In the event that a third party (i.e., not the SwRI client) questions an SwRI test report for procedure or results, the matter will be referred to the Manager of Certification and Product Services, Fire Technology Department, for his review and direct response to the third party inquiry. This response will be reviewed both for accuracy and content by the Director of this Department.

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. SwRI has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

The laboratory requires the client to sign an "Application for Follow-up Services and Listing" Agreement, and complete a "Quality Assurance Manual Information Form" for use during the initial inspection of the manufacturing site. Once there is agreement on the QA Manual and the product has passed the appropriate tests, the client then must sign a second contract entitled Follow-Up and Listing Service Agreement before being permitted to use the SwRI Label on his product. The initial plant inspection is conducted to review the manufacturer's quality control program and to determine his ability to conduct the production line tests required by the standard.

Unannounced follow-up inspections of the manufacturing site are conducted at least quarterly. The inspections may be as frequent as deemed necessary by the Manager of Certification and Product Services. Qualified personnel conduct and report inspection activities to ensure that products continue to be manufactured in accordance with the drawings and specifications referenced in the final reports. The inspection consists of a visual check of the manufacturing techniques previously outlined in the Manual.

The inspector, upon discovery of a discrepancy affecting the quality of the product, immediately notifies the manufacturer and recommends immediate corrective action to be taken. The discrepancy is documented on the Inspection Form and the Department of Fire Technology is notified. The use of the laboratory's listing mark is suspended until corrective action is taken to resolve the discrepancy.

At the present time, the Department of Fire Technology has no listed products subject to field audits. However, the department reserves the right to make a field audit.

The printing and distribution of SwRI's listing label is controlled by the Department of Fire Technology. Depending upon the product, labels may be roll printed on the material or serialized and affixed after manufacture. It is the manufacturer's responsibility to maintain sufficient inventory labels to satisfy manufacturing requirements and account for all labels.

Independence

Section 1910.7(b)(3) requires that an NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendors of equipment or materials being tested. The applicant stated in its application that it is in complete compliance with this requirement.

OSHA believes, based upon an examination of the application with particular reference to the statements in Exhibit 2A, section 1.7, pages 3 and 4, and the Affidavit in appendix A, opposite page 15, as well as with discussions with SwRI executives, that the Southwest Research Institute is independent within the meaning of § 910.7(b)(3).

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an American National Standards Institute (ANSI) safety designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials. As to the non-ANSI UL test standards for which SwRI has applied to test products to, OSHA previously had examined the status of the Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report, OSHA finds that the Southwest Research Institute has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the Southwest Research Institute is hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

SwRI has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ASTM E 152—Standard Methods of Fire Tests of Door Assemblies
ANSI/UL 10A—Tin-Clad Fire Doors
ANSI/UL 10B—Fire Tests of Door Assemblies
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 155—Tests of Fire Resistance of Vault and File Room Doors
ANSI/UL 555—Fire Damping and Ceiling Dampers
UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
UL 1887—Fire Test of Plastic Sprinkler Pipe for Flame and Smoke Characteristics

The Southwest Research Institute must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to SwRI's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If SwRI has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

SwRI shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, SwRI agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

SwRI shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

SwRI will continue to meet the requirements for recognition in all areas where it has been recognized; and

SwRI will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on July 13, 1993, and will be valid for a period of five years from that date, until July 13, 1998, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 6th day of July 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93-16553 Filed 7-12-93; 8:45 am]
BILLING CODE 4510-26-M

Utah State Standards; Approval

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902.

On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah State Plan and the adoption of subpart E to part 1952 containing the decision. Utah was granted final approval on section 18(e) of the Act on July 16, 1985. By law (section 63-46a-16 Utah Code), the Utah Administrative Rulemaking Procedure is the authorized compilation of the administrative law of Utah and "shall be received in all the courts, and by all the judges, public officers, commissioners, and departments of the State government as evidence of the administrative law of the State of Utah * * *" The Utah Occupational Safety and Health Division revised its Administrative Rulemaking Act (Chapter 46a, Title 63, Utah annotated, 1953) which became effective on April 29, 1985. On May 6, 1985, a State Plan Supplement was submitted to the Occupational Safety and Health Administration (OSHA) for approval and publication in the **Federal Register**. The plan supplement was published in the **Federal Register** (53 FR 43688) on October 28, 1988. The supplement provides for adoption of Federal standards by reference through the publication of standards in the Utah State Digest. Utah now adopts Federal OSHA standards by reference using the OSHA numbering system.

Following the publication date, the agency shall allow at least 30 days for public comment on the rule. During the public comment period the agency may hold a hearing on the rule. Except as provided in statutes 63-46a-6 and 63-46a-7, a proposed rule becomes effective on any date specified by the agency which is no fewer than 30 nor more than 90 days after the publication date. The agency shall provide written notification of the rule's effective date to the office. Notice of the effective date shall be published in the next issue of the bulletin.

OSHA regulations (29 CFR 1953.22 and 29 CFR 1953.23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days of emergency temporary standards. Although adopted State Standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval. The State submitted statements along with copies of the Utah State Digest, to verify the adoption by reference of a standard for the Code of Federal Regulations. The adoption by reference standards actions occurred as follows: (1) The Industrial Commission of Utah, Occupational Safety and Health Division, adopted by reference on January 1, 1993, the Federal Standard, Occupational Exposure to 4,4'Methylenedianiline (MDA), Final Rule of 29 CFR parts 1910 and 1926 as published in 57 FR 35630. The effective date of the State Rule was February 1, 1993; (2) The Industrial Commission of Utah, Occupational Safety and Health Division, adopted by reference on February 15, 1993, Federal Standard, Permit-required Confined Spaces, for General Industry Final Rule as published in 29 CFR part 1910 in 58 FR 4462. The effective date of the State Rule was March 31, 1993.

Decision

The statement of incorporation of the aforementioned Federal Standard by reference has been printed in the Utah Administrative Code. The code contains the statement of the incorporation of Federal Standards by reference as

compiled by the Occupational Safety and Health Division of the Industrial Commission of Utah. Copies of the Utah Administrative Code have been reviewed and verified at the Regional Office. OSHA has determined that the Federal Standards incorporated by reference from 29 CFR part 1910 and 29 CFR part 1926 are identical to Federal Standards with no differences and therefore approves the Utah Standards.

Location of Supplement for Inspection and Copying

A copy of the standards along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576 Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 East 300 South, Salt Lake City, Utah 84151; and the Director, Federal-State Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law which include public comment, and further public participation would be repetitious. This decision is effective July 13, 1993.

(Sec. 18, Public law 91–596, 84 Stat. 1608 [29 U.S.C. 667]). Signed at Denver, Colorado this 23rd day of June, 1993.

Byron R. Chadwick,

Regional Administrator, VIII.

[FR Doc. 93–16554 Filed 7–12–93; 8:45 am]

BILLING CODE 4510–26–M

Wyoming State Standards; Approval

Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of subpart BB to part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

(1) Advisory Committee coordination;

(2) Publication in newspapers of general/major circulation with a 45-day waiting period for public comment and hearings;

(3) Adoption by the Wyoming Health and Safety Commission;

(4) Review and approval by the Governor;

(5) Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1953.22 and 29 CFR 1953.23) require that States respond to the adoption of new or revised permanent Federal Standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State Standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval.

By letter dated April 1, 1993 from Stephan R. Foster, OSHA Program Manager, Wyoming Department of Employment, Division of Employment Affairs-OSHA, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to the following Federal OSHA General Industry Standards, 29 CFR 1910.1030 Occupational Exposure to Bloodborne Pathogens Final Rule, 56 FR 64004, 12/6/91; 29 CFR 1910.109 Explosives and Blasting Agents, Sec. K; 29 CFR 1910.119 Process Safety Management of Highly Hazardous Chemicals Final Rule, amended by 57 FR 6356, 2/24/92; and 29 CFR 1910.119 Corrections amended by 57 FR 7847, 3/4/92.

The above adoptions of Federal Standards have been incorporated in the State Plan and are contained in the Wyoming Occupational Health and Safety Rules and Regulations (General), as required by Wyoming Statute 1977, Section 27–11–105 (a) (viii).

State Standards for 29 CFR 1910, Occupational Exposure to Bloodborne Pathogens; Final Rule was adopted by the Health and Safety Commission of Wyoming on February 28, 1992 (effective 4/1/92); State Standards for 29 CFR 1910.109, Explosives and Blasting Agents, Section K and 29 CFR 1910.119, Process Safety Management, Corrections were adopted by the Health and Safety Commission of Wyoming on May 15, 1992 (effective 7/7/92).

Decision

The above State Standards have been reviewed and compared with the relevent Federal Standards, and OSHA has determined that the State Standards are at least as effective as the comparable Federal Standards, as required by section 18 (c)(2) of the Act. OSHA has also determined that the differences between the State and Federal Standards are minimal and that the Standards are substantially identical. OSHA therefore approves these Standards. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

Location of Supplement for Inspection and Copying.

A copy of the Standards Supplements, along with the approved Plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80924; the Department of Employment, Division of Employment Affairs-OSHA, Herschler Building, 2nd Floor East, 122 West 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

Under 29 CFR 1953.2 (c), the Assistant Secretary may prescribe alternative procedures, or show any other good cause consistent with applicable laws, to expedite the review process. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and makes the Regional Administrator's approval effective upon publication for the following reason(s): The Standards were adopted in accordance with the procedural requirements of State law which include public comment, and further public participation would be repetitious. This decision is effective July 13, 1993.

(Sec. 18, Public Law 91–596, 84 Stat. 1608 [29 U.S.C. 667]).

Signed at Denver, Colorado this 23rd day of June, 1993.

Byron R. Chadwick,

Regional Administrator, VIII.

[FR Doc. 93-16555 Filed 7-12-93; 8:45 am]

BILLING CODE 4510-28-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 93-7]

Computer Program Rental by Libraries: Report of the Register of Copyrights on the Effects of 17 U.S.C. 109(b)(2).

AGENCY: Copyright Office; Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is preparing a report for Congress on the extent to which the Computer Software Rental Amendments Act of 1990 has achieved its intended purpose with respect to lending by nonprofit libraries. This Act permits lending of a computer program for nonprofit purposes by a nonprofit library, if each copy lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with regulations prescribed by the Register of Copyrights. The Act also requires the Office to report to Congress by December 1, 1993, on whether 17 U.S.C. 109(b)(2) has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. This report shall also advise Congress as to any information or recommendations that the Register considers necessary to carry out Congress's intent.

The Office seeks public comments on and information about lending of computer programs for nonprofit purposes by nonprofit libraries, for the purpose of evaluating how the nonprofit lending provision is working. The Office invites comment from all interested parties including software proprietors, librarians, and library patrons.

EFFECTIVE DATE: Comments should be received on or before October 12, 1993.

ADDRESSES: Interested persons should submit ten copies of their written comments as follows: If sent by mail: Dorothy Schrader, General Counsel, United States Copyright Office, Library of Congress, Department 17, Washington, DC 20540.

If delivered by hand: Office of the Register of Copyrights, Copyright Office, James Madison Memorial Building, room 407, First Street and Independence Avenue, SE., Washington, DC 20559.

FOR ADDITIONAL INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Department 17, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Section 109 of the Copyright Act contains an important limitation on the exclusive rights of copyright owners; this limitation is known as the first-sale doctrine. Under this doctrine, the owner of a lawfully made copy of a work, or any person authorized by such owner, is entitled without authority of the copyright owner to sell or otherwise dispose of the possession of that copy.

On December 1, 1990, President Bush signed into law, Pub. L. 101-650, 104 Stat. 5059 containing the "Computer Software Rental Amendments Act." Section 109(b)(1)(A) of that Act prevents the commercial rental, lease, or lending of computer programs without the authorization of the copyright owner. Congress enacted this limitation on the first sale doctrine because it recognized that the commercial lending of computer software could encourage unauthorized copying and deprive copyright owners of a return on their investment. [1]

Congress had already amended the first sale doctrine in 1984 to give owners of copyright in sound recordings control over commercial rental of phonorecords by prohibiting the commercial rental of these works without the authorization of the copyright owner. In 1988, the Record Rental Amendment Act was renewed, with expiration set for October 1, 1997.

The Computer Software Rental Amendments Act does not accord a rental right with respect to computer programs embodied in a machine or product (such as automobiles or calculators) that cannot be copied during the ordinary operation or use of the machine or product; or computer programs embodied in video games. 17 U.S.C. 109(b)(1)(B). The Act also provides that the transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes. 17 U.S.C. 109(b)(1)(A).

Congress also did not wish to prohibit the nonprofit lending of computer programs by nonprofit libraries and nonprofit educational institutions. These institutions serve a valuable public purpose by making computer software available to students and others who would not otherwise have access to it. At the same time, Congress recognized that library patrons could engage in the same type of unauthorized copying that occurs in a commercial context. [2] The Computer Software Rental Amendments Act therefore permits nonprofit lending of computer programs by nonprofit libraries, if each copy lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with regulations prescribed by the Register. 17 U.S.C. 109(b)(2)(A).

The regulations governing warning of copyright for software lending by nonprofit libraries are contained in 37 CFR 201.24. Under that section, the "Warning of Copyright for Software Rental" to be affixed to the packaging containing the computer program lent by the nonprofit library shall consist of a verbatim reproduction of the following notice:

> **Notice: Warning of Copyright Restrictions**
>
> The copyright law of the United States (Title 17, United States Code) governs the reproduction, distribution, adaptation, public performance, and public display of copyrighted material.
>
> Under certain conditions specified in law, nonprofit libraries are authorized to lend, lease, or rent copies of computer programs to patrons on a nonprofit basis and for nonprofit purposes. Any person who makes an unauthorized copy or adaptation of the computer program, or redistributes the loan copy, or publicly performs or displays the computer program, except as permitted by title 17 of the United States Code, may be liable for copyright infringement.
>
> This institution reserves the right to refuse to fulfill a loan request if, in its judgment, fulfillment of the request would lead to violation of the copyright law.

This warning shall be affixed to the packaging that contains the copy of the computer program which is the subject of a library loan to patrons, by means of a label cemented, gummed, or otherwise durably attached to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copy of the computer program. The notice shall be printed in such a manner as to be clearly legible, comprehensible, and readily apparent to a casual user of the computer program. *See* 37 CFR 201.24 (1992).

[1] H. Rep. No. 735, 101st Cong., 2d Sess. 8 (1990).

[2] *Id.*

2. Reporting Requirement

Section 109(b)(2)(B) of title 17, United States Code, established under the Computer Software Rental Amendments Act, requires the Register of Copyrights, not later than three years from the date of enactment, and such times thereafter as the Register considers appropriate, to submit to Congress a report stating whether the library lending provisions of the Act have served their intended purpose of maintaining the integrity of the copyright system, while still providing nonprofit libraries the capacity to fulfill their function. The report shall also advise the Congress as to any information or recommendations that the Register considers necessary to carry out the purposes of the subsection.

The report is due on December 1, 1993, that is, not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990.

In order to assist the Copyright Office in preparing this report, public comment on the subject of nonprofit lending of computer programs is invited. The Office is interested in surveying the practices of libraries with regard to computer software. We also seek advisory comments on whether and how the purposes of section 109(b)(2) could be better carried out.

3. Specific Questions

The Copyright Office is interested in receiving comments about any issues relevant to section 109(b)(2) which concern copyright owners, librarians, and library patrons. Of particular interest are the following questions.

(1) If you are a nonprofit library or educational institution, do you feel you are meeting the needs of your patrons with regard to computer software? Does section 109(b)(2)(A) facilitate or impede fulfillment of your function as a nonprofit library or educational institution?

(2) How often do you lend copies of computer programs to other nonprofit libraries, or nonprofit educational institutions? How often do you lend computer programs to staff or users of your own institution?

(3) Do the regulations in 37 CFR 201.24 pertaining to warning of copyright for software rental represent an onerous burden?

(4) Do you have reason to believe that unauthorized copying, adaptation, redistribution, public performance or display of computer programs is occurring as a result of the nonprofit lending permitted by section 109(b)?

(5) Do you feel the section 109(b) exemption for nonprofit libraries and educational institutions is harmful to the interests of copyright owners? Has there been any change in authors' income as a result of nonprofit lending of software?

(6) Are you aware of any evidence that unauthorized copying, adaptation, redistribution, public performance or display results from nonprofit lending of computer software?

(7) Do you feel that new legislation is needed either to clarify existing legislation or to rectify any imbalance between the rights of owners and the needs of users? If so, please specify as precisely as possible what provisions such legislation should contain.

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, in room 401, James Madison Memorial Building, Library of Congress, First Street and Independence Avenue, SE., Washington, DC

Dated: July 6, 1993.

Ralph Oman,

Register of Copyrights.

[FR Doc. 93-16481 Filed 7-12-93; 8:45 am]

BILLING CODE 1410-07-F

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Submission of Proposed Information Collections to OMB

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collections submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is giving notice that the proposed collections of information described in this notice have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320. Public comment is invited on these collections.

DATES: Comments should be submitted by August 12, 1993.

ADDRESSES: Copies of the Proposed information collections and supporting documentation can be obtained from the Policy and Program Analysis Division (NAA), room 409, National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408. Telephone requests may be made to (202) 501-5110.

Written comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (202) 501-5110.

The following proposed information collections have been submitted to OMB:

1. National Historical Publications and Records Commission Grant Program Application

Description: The information collection is a narrative grant application prepared by nonprofit organizations and institutions, state and local government agencies, Federally acknowledged or state recognized Native American tribes or groups, and individuals to apply for National Historical Publications and Records Program (NHPRC) support of projects in documentary editing and historical records preservation and planning.

Purpose: The information is used to determine eligibility of the applicant and evaluate the suitability of the proposed project for support.

Frequency of response: On occasion; annually if applying for continued support of a project for which a previous NHPRC grant has been received.

Number of respondents: 190.

Reporting hours per response: 54.

Annual reporting burden hours: 10,260.

2. Application for Host Institutions of Archival Administration Fellowship

Description: The information collection is a narrative application submitted by public and private institutions applying to the National Historical Publications and Records Commission (NHPRC) for grant funds to host one of the two archival administration fellowships funded each year by the NHPRC.

Purpose: The application is used to determine host institutions for the fellowship program.

Frequency of response: One-time.

Number of respondents: 9.

Reporting hours per response: 17.

Annual reporting burden hours: 153.

3. Application for Archival Administration Fellowship

Description: This application is completed by individuals with at least 2 years professional archival experience who wish to apply for a 9- to 12-month fellowship in archival administration

sponsored by the National Historical Publications and Records Administration.

Purpose: The information is used to verify applicant eligibility for the fellowship and to award fellowships to the best qualified applicants.

Frequency of response: One-time.
Number of respondents: 15.
Reporting hours per response: 8.
Annual reporting burden hours: 120.

4. Application for Historical Documentary Editing Fellowship

Description: The application is completed by individuals holding a Ph.D. or who have completed all requirements for the degree except the dissertation who wish to apply for a 10-month fellowship in historical documentary editing with a documentary publication project supported by the National Historical Publications and Records Commission.

Purpose: The information is used to verify applicant eligibility for the fellowship and to award fellowships to the best qualified applicants.

Frequency of response: One-time.
Number of respondents: 14.
Reporting hours per response: 8.
Annual reporting burden hours: 112.

5. Application for Attendance at the Institute for the Editing of Historical Documents

Description: The application is completed by individuals who wish to attend a 2-week institute cosponsored by the National Historical Publications and Records Commission (NHPRC) that provides specialized training in documentary editing activities.

Purpose: The information is used by the NHPRC staff to evaluate applicants' qualifications and to select individuals to attend the institute.

Frequency of response: One-time.
Number of respondents: 25.
Reporting hours per response: 2
Annual reporting burden hours: 50.

Dated: July 2, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93-16522 Filed 7-12-93; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by August 12, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503 (202-395-7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506 (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506 (202-682-5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Learning through Design Teacher Survey Project
Frequency of Collection: One-time
Respondents: Individual elementary and secondary school teachers
Use: Voluntary survey elicits relevant information from elementary and secondary school teachers who are using design activities to develop creative problem-solving, critical thinking and other skills in their students. The results will help the Design Arts Program assess the impact of design as an educational tool.
Estimated Number of Respondents: 500
Average Burden Hours Per Response: .75
Total Estimated Burden: 375

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 93-16504 Filed 7-12-93; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-410]

Niagara Mohawk Power Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, Appendix J, to Niagara Mohawk Power Corporation (the licensee) for Nine Mile Point Nuclear Station, Unit 2 (NMP-2), located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

By letter dated May 28, 1993, the licensee requested a schedular exemption pursuant to 10 CFR 50.12(a) from the requirements of 10 CFR part 50, Appendix J, Section III.B, relating to certain Type B tests. Specifically, the licensee requested temporary relief from the requirement to perform Type B tests at intervals of not greater than 24 months for the expansion bellows on four Traversing Incore Probe (TIP) containment penetrations (2NMT*Z31A,C,D, and E). A one-time only delay, until the end of the 1993 refueling outage (RF03) (currently scheduled to begin on October 1, 1993) was requested for the performance of these leak tests. The licensee's request was necessitated to avoid a plant shutdown solely to perform the required leak tests.

The Need for the Proposed Action

The bellows on the TIP penetrations are required by Appendix J of 10 CFR part 50 and by NMP-2 Technical Specification (TS) 4.6.1.2.d. to be Type B tested at intervals no greater than every two years. The TIP penetrations are listed in the NMP-2 Updated Safety Analysis Report (USAR) Table 6.2-56 with Note 34 applicable. Note 34 states, "The metal bellows at the end of the TIP system drywell penetration flanges will be included in Type A testing. The flanges themselves and the midspan flange in 2NMT*Z31B will be subject to Type B testing." On April 23, 1993, the licensee determined that the bellows in the subject penetrations were not in compliance with the requirement of TS 4.6.1.2.d. and 10 CFR part 50, Appendix J, in that these bellows had been Type A tested rather than the required Type B tested. Type B testing of these bellows requires access to the bellows. Access to the bellows requires the reactor be shut down and the drywell to be deinerted

from its nitrogen atmosphere. The schedular exemption is required to permit the licensee to continue to operate NMP–2 until its next scheduled shutdown, the 1993 refueling outage which is presently scheduled to begin on October 1, 1993, rather than to be required to shut down NMP–2 solely to perform the required Type B leak tests.

Environmental Impacts of the Proposed Action

The proposed schedular exemption would allow the licensee to continue to operate NMP–2 until the end of the 1993 refueling outage. The NMP–2 1993 refueling outage is currently scheduled to begin October 1, 1993. The four subject penetrations would be Type B tested during the 1993 refueling outage.

Note 34 was added to USAR Table 6.2–56 by the licensee via Licensing Document Change Notice (LDCN) #1458 dated November 29, 1984, however, no justification or backup data could be located to substantiate the addition of Note 34. When LDCN #1458 was issued in 1984, the licensee had no method for testing these bellows. The Final Safety Analysis Report was subsequently interpreted to imply that a Type A test was acceptable for testing these bellows. This noncompliance (Type A testing versus Type B testing) has existed since issuance of the facility operating license on October 31, 1986.

The maximum allowable overall containment leakage rate is limited by TS 3.6.1.2. to 1.1 weight percent of containment air per day at the peak accident pressure of 39.75 psig. The most recent Type A test performed in January 1991 measured the overall containment leakage to be 0.305 percent per day. This value includes the TIP penetrations as well as the other Type B and Type C leakage paths. The combined Type B and Type C leakage was 0.211 percent per day. The unaccounted leakage of 0.094 percent per day is attributed to the containment liner, TIP penetrations, etc. Therefore, even if all the unaccountable leakage was associated with the TIP penetrations, the combined leakage of TIP penetrations and that measured from the other Type B and Type C penetrations would still be less than the allowable leakage of 0.6 L_a or 0.66 percent per day. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed schedular exemption.

With regard to potential nonradiological impacts, the proposed schedular exemption only involves Type B testing of TIP penetrations. The proposed schedular exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed schedular exemption.

Alternative to the Proposed Action

As one alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. This alternative would also result in an unwarranted shutdown of the plant.

As a second alternative to the proposed action, the NRC staff considered requiring performance of the subject Type B tests during the plant's first cold shut down of sufficient duration. The environmental impacts of this alternative are similar to the proposed action.

Alternative Use of Resources

The actions associated with the granting of the proposed schedular exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of Nine Mile Point Nuclear Station, Unit No. 2," dated May 1985 (NUREG–1085).

Agencies and Persons Contacted

The NRC staff reviewed the licensee's submittal that supports the proposed schedular exemption discussed above. The NRC staff consulted with the State of New York regarding the environmental impact of the proposed schedular exemption. The State of New York had no comments regarding this proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed schedular exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see the licensee's application for the schedular exemption dated May 28, 1993. This document is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 6th day of July 1993.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–16559 Filed 7–12–93; 8:45 am]

BILLING CODE 7590–01–M

Radiological Criteria for Decommissioning of NRC–Licensed Facilities; Availability of the Enhanced Participatory Rulemaking Electronic Bulletin Board and 800 Number

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of the enhanced participatory rulemaking electronic bulletin board and 800 number.

SUMMARY: On April 16, 1993, the Office of Nuclear Regulatory Research (RES) opened an electronic bulletin board system (BBS) in an effort to increase public access to the Enhanced Participatory Rulemaking process being employed to develop radiological criteria for decommissioning. An electronic bulletin board was suggested by participants at a number of the workshops conducted in support of this rulemaking as an additional mechanism for making information publicly available, more accessible, and providing another means for interested individuals and groups to provide comments to the staff. The BBS offers an additional way of contacting the NRC, provides current information about the status of the decommissioning rulemaking, and also provides an electronic method for members of the public to comment on the rulemaking. Background information on the rulemaking and summaries of the public workshops are available for download or on-line viewing. Callers using the BBS can easily register their comments in a reserved area on the BBS. The comments are then sent to the docket within 1 business day of receipt. The comments are also directly transferred to a database that will be used by the staff for comment categorization and analysis.

The staff expects this bulletin board system to be an important part of the open communication that is the hallmark of the Enhanced Participatory Rulemaking effort.

FOR FURTHER INFORMATION CONTACT: Christine Daily, Mail Stop NLS/139, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 492–3999; FAX (301) 492–3866.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has set up an electronic bulletin board to provide information and accept public comments about the Enhanced Participatory Rulemaking process. This bulletin board provides updated information about ongoing events, access to related files of information, and allows anyone to provide comments on the rulemaking directly to the NRC.

To connect to the bulletin board, you need an MS-DOS personal computer (if using a Macintosh computer, when asked if you want color menus, please say no), a modem, and a communications software package. Set your parity to none, data bits to 8, and stop bits to 1 (N,8,1). Use your communications software to dial (800) 880–6091. Set your terminal emulation to ANSI or VT–100. You should be able to use any communications software that allows the N,8,1 setting.

After you have connected to the bulletin board, you will be asked to enter your name and select a password. You will be given some information about the board and then be asked a series of questions about your address and phone number. These questions will only be asked the first time you call and will allow the NRC to formally docket (record) any comments you may wish to send concerning the rulemaking.

Following the initial questionnaire, you will be asked if you would like to view the newsletter. This newsletter will be used to provide updated information and any other recent news that may be of interest. Next you will be shown the main menu, where you will have a choice of going to the message section or the files section. The message section is a place to leave short comments or questions for the NRC staff. The file section contains a group of background documents about the rulemaking that can be downloaded to your computer or read on-line. You can also upload a file in this section containing your comments on the rulemaking. These comments will be sent to the docket, usually within 1 business day. All of the menus give you the option of leaving the bulletin board by selecting (G) for good-bye.

If you have any questions about the bulletin board or the rulemaking, please leave a message addressed to the NRC staff in the message section of the bulletin board. This section works like e-mail and will be reviewed at least once each day by the NRC staff.

Dated at Rockville, Maryland, this 30th day of June 1993.

For the U.S. Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications.

[FR Doc. 93–16558 Filed 7–12–93; 8:45 am]

BILLING CODE 7590–01–M

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the Commonwealth of Massachusetts

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the Commonwealth of Massachusetts. The MOU provides the basis for mutually agreeable procedures whereby the Commonwealth of Massachusetts may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in Massachusetts. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the **Federal Register** Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective May 21, 1993.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

Agreement Pertaining to the Emergency Response Data System Between the Commonwealth of Massachusetts and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the Commonwealth of Massachusetts, acting through Massachusetts Emergency Management Agency, enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

Massachusetts recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (57 FR 6462, February 25, 1992). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Massachusetts fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Massachusetts Emergency Management Agency ("MEMA"), an agency created by Chapter 639 of the Acts of 1950, as amended.

III. Scope

A. This Agreement defines the way in which NRC and Massachusetts will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants in and adjacent to the Commonwealth of Massachusetts, specifically Pilgrim Station, Seabrook Station, and Vermont Yankee.

B. It is understood by the NRC and the Commonwealth of Massachusetts that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the Commonwealth of Massachusetts, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the Commonwealth of Massachusetts on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the Commonwealth of Massachusetts authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the Commonwealth of Massachusetts during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the Commonwealth of Massachusetts. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. Massachusetts's General Responsibilities

A. Massachusetts, acting through MEMA, will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Massachusetts will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Massachusetts agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC and/or the utility provided technical liaison personnel.

VI. Implementation

Massachusetts and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Massachusetts, through MEMA, and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and MEMA agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Massachusetts will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Massachusetts General Laws Chapter 66A, Fair Information Practices, and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to MEMA by the NRC. MEMA may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, MEMA will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Governor-appointed Director of the Massachusetts Emergency Management Agency. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and MEMA staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and MEMA will work together to resolve these differences.

B. Resolution of differences between MEMA and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

Dated: January 6, 1993.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Dated: May 21, 1993.

For The Commonwealth of Massachusetts.

A. David Rodham,

Director, Massachusetts Emergency Management Agency.

[FR Doc. 93-16560 Filed 7-12-93; 8:45 am]

BILLING CODE 7590-05-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–19565; 812–8350]

Bayfield Low Income Housing Limited Partnership, et al.; Application

July 7, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Bayfield Low Income Housing Limited Partnership (the "Partnership") and Megan Asset Management, Inc. (the "General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATIONS: Applicants seek an order exempting the Partnership from all provisions of the Act, retroactive to July 1, 1990, the date of the formation of the Partnership. The Partnership owns limited partnership interests in partnerships that engage in the development, ownership, and operation of housing for low and moderate income persons, thereby operating as a "two-tier" limited partnership.

FILING DATE: The application was filed on April 13, 1993, and amended on June 10, 1993 and July 6, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 2, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 20 Carpenters Brook Road, Greenwich, Connecticut 06831–1210.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Partnership was formed under Delaware law as of July 1, 1990, pursuant to a joint plan of reorganization of 52 debtors (the "Debtor Investor Partnerships") that was confirmed under Chapter 11 ("Chapter 11") of Title 11 of the United States Code (the "Bankruptcy Code"). The Partnership operates as a "two-tier" real estate limited partnership, *i.e.*, the Partnership owns limited partnership interests in other limited partnerships ("Operating Partnerships") that in turn engage in the development, rehabilitation, ownership, and operation of apartment complexes providing housing for low and moderate income persons (the "Projects").

2. The Partnership's objectives are to preserve and protect the Partnership's capital, provide limited cash distributions from operations, and provide capital appreciation to the extent of any increases in the value of the Projects. The Partnership also is designed to provide current tax benefits to limited partners of the Partnership ("the Limited Partners") in the form of tax credits under section 42 of the Internal Revenue Code ("Tax Credits"), which, subject to certain limitations, may be applied against their federal income tax liability.

3. During the period from September 1987 through December 1988, each of the Debtor Investor Partnerships was formed to, and did, acquire limited partnership interests in Operating Partnerships. In most instances, each Debtor Investor Partnership owned between 95 and 99 percent of the partnership interests in its respective Operating Partnerships; in all instances the Debtor Investor Partnerships owned at least a majority interest in the Operating Partnerships. None of the Debtor Investor Partnerships had more than 50 limited partners, all of whom acquired their limited partnership interests in private offerings exempt from registration under the Securities Act of 1933. Section 3(c)(1) of the Act excludes from the definition of "investment company" any issuer whose outstanding securities are beneficially owned by not more than 100 persons and that does not make or propose to make a public offering of its securities. Accordingly, none of the Debtor Investor Partnerships was an investment company.

4. Following their formation, certain of the Debtor Investor Partnerships failed to make prescribed capital contributions to Operating Partnerships of which they were limited partners. Subsequently, First American Holdings, Inc. ("First American"), the general partner of each of the Debtor Investor Partnerships, became insolvent. To protect their interests in the Operating Partnerships, the Debtor Investor Partnerships were placed under the protection of Chapter 11.

5. On July 13, 1990, the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court") entered an order confirming a joint plan of reorganization (the "Plan") of the Debtor Investor Partnerships. The Plan provided, in part, for the creation of the Partnership as a master limited partnership, into which all of the assets of the Debtor Investor Partnerships were "rolled up."

6. There are currently approximately 1,840 Limited Partners. Accordingly, the Partnership is no longer excluded from the definition of "investment company" pursuant to section 3(c)(1). The former general partner of the Partnership inadvertently failed to apply for exemption under the Act at the time of the formation of the Partnership, as none of the parties to the bankruptcy understood that the Act might be applicable to the Partnership.

7. In consideration of their contribution of assets to the Partnership, each of the Debtor Investor Partnerships received an allocable portion of the limited partnership interests in the Partnership. These Partnership interests then were distributed to the limited partners of each Debtor Investor Partnership. The Partnership's limited partnership interests are registered under section 12(g) of the Securities Exchange Act of 1934 (the "1934 Act"). The Partnership files periodic reports with the SEC pursuant to section 13 of the 1934 Act.

8. Pursuant to the Plan, Megan Management Company, Inc. (the "Independent Manager") was engaged by the Partnership to provide management and administrative services, which were previously the responsibility of First American. The Independent Manager was selected pursuant to a search, evaluation, and competitive bidding process carried out by a special committee formed in the bankruptcy. Following a dispute between First American, on the one hand, and the Independent Manager and Partnership, on the other, First American was replaced as general partner by the General Partner, a company under common control with the Independent Manager. The division of powers and responsibilities between a general partner and an independent

manager is no longer meaningful following the resignation of First American, its replacement by the General Partner, and the subsequent assumption of the rights and obligations of the Independent Manager by the General Partner. The General Partner, however, continues to receive separate compensation in the respective capacities of general partner and independent manager of the Partnership.

9. In addition to certain incentive compensation, the Independent Manager is entitled to receive $436,000 annually for each of the years 1993 and 1994, and $149,500 annually for each of the years 1995 through 1998. Commencing with calendar year 1999, the Independent Manager's base fee of $149,500 will be reduced by $750 for each Operating Partnership in which the Partnership no longer owns a limited partnership interest.

10. Subsequent to the confirmation of the Plan, the Partnership acquired minority limited partnership interests in seven investor partnerships that own limited partnership interests in partnerships owning low to moderate income housing eligible for Tax Credits (the "Investor Partnerships"). The Investor Partnerships, which were purchased for approximately $287,470, were acquired in order to replace Tax Credits lost to the Partnership through the insolvency or loss of investments in certain Operating Partnerships. Unlike investments in newly-formed Operating Partnerships, investments in these partnerships will generate Tax Credits over approximately the same period as the Partnership's interests in the Operating Partnerships. At the time of filing of the application, the Investor Partnerships accounted for approximately 1.5% of the Partnership's total assets. Applicants regard the purchase of such interests as incidental to the Partnership's business of maintaining its interests in the Projects. The Partnership has agreed, however, as a condition to the grant of the requested relief, that it will not make any future purchases of interests in Investor Partnerships. Any further investments by the Partnership in low and moderate income housing will be made only through the direct ownership of limited partnership interests in Operating Partnerships.

11. The Partnership continues to collect capital contributions due it pursuant to promissory notes originally executed by limited partners of the Debtor Limited Partnerships in connection with the purchase of their interests therein (the "Investor Notes"), and to make its required capital contributions to the Operating Partnerships and payments to its creditors in accordance with the applicable provisions of the Plan. The Partnership's principal source of funds to meet its obligations and make distributions to its Limited Partners is the proceeds of the Investor Notes.

12. Pursuant to the Plan, the Debtor Investor Partnerships' indebtedness to four banks (the "Secured Lenders") was consolidated into four loans to the Partnership (the "Secured Loans"), which were secured by four separate pools of Investor Notes. As of June 1, 1993, approximately $3.5 million in principal amount was outstanding under the Secured Loans, and the Investor Notes securing the Secured Loans had a remaining aggregate principal balance of more than three times the amount of the Secured Loans.

13. The Plan provides that after the payment or application of all monies due to the Secured Lenders in each payment period, the balance shall be paid over to the Partnership and disbursed in accordance with the Plan. Two of the Secured Lenders have become insolvent and have been placed under the control of the Federal Deposit Insurance Corporation. As a result, and because the overcollateralization of the Secured Loans reduces the Secured Lenders' incentive to pursue delinquencies, such institutions have not aggressively pursued collection of delinquent Investor Notes since such takeover, and have failed to implement settlements which would have resulted in collection of amounts due under defaulted Investor Notes. Such failure properly to administer and collect the Investor Notes is detrimental to the Partnership, as the proceeds of such Investor Notes not utilized to repay the Secured Loans are the Partnership's principal source of funds to satisfy its obligations under the Plan. Applicants believe that collections will continue to lag and delinquencies increase under the Investor Notes so long as they are held by these institutions.

14. The General Partner is currently seeking to refinance the Secured Loans on terms that will allow the General Partner to administer and vigorously attempt to collect the Investor Notes. In order to preserve the priority of the security interest securing the Secured Loans, the proposed refinancing must take the form of the purchase of the existing obligations of the Partnership to the respective Secured Lenders, which were incurred in connection with the confirmation of the Plan in July 1990.

15. The Partnership has received commitments from two underwriters to conduct a "best-efforts" offering of interest in such loans. The offering will be a private offering made only to financial institutions that are also accredited investors. Thus, even if the interests in commercial loans such as the Secured Loans are deemed to be securities, the offering of such securities would be exempt from registration under the Securities Act of 1933. In addition, such interests will be sold to fewer than 100 beneficial owners, calculated in accordance with section 3(c)(1) of the Act. Accordingly, applicants believe that the issuer of such securities would be exempt from registration as an investment company under the Act pursuant to section 3(c)(1).

16. Once purchased, the Secured Loans will be held by a trustee pursuant to an indenture between the Partnership and the trustee. The indenture will provide that any transfer of interests in the loans shall be made in compliance with, or pursuant to an exemption from, the Act and the Securities Act of 1933. Pursuant to the indenture, the General Partner will have the right to take over the administration of the Investor Notes. Applicants do not seek, and have not obtained, any assurance from the SEC or its staff regarding the status of the proposed refinancing under the Act or any other statute.

17. Pursuant to the Plan, all funds held by the Partnership are subject to section 345 of the Bankruptcy Code, which requires that such funds either be held in federally-insured deposits or investments or collateralized by U.S. Government securities or a special surety bond.

18. Although the Partnership's direct control over the management of each Project is limited, the Partnership's ownership of all or nearly all of the limited partnership interests in the Operating Partnerships is, in an economic sense, tantamount to direct ownership of the Projects themselves. The interests in the Operating Partnerships have no value other than the value of the Projects. No Operating Partnership generates substantial income or expense other than as a direct result of the ownership and operation of its Projects.

19. The Partnership is managed and controlled by the General Partner. The Limited Partners, consistent with their limited liability status, are not entitled to participate in the control of the Partnership's business. A majority in interest of the Limited Partners, however, have the right to amend the partnership agreement (subject to certain limitations), dissolve the Partnership, remove the General Partner "for cause", and elect a replacement

general partner. Each Limited Partner also is entitled to review all books and records of the Partnership and will receive certain reports from the Partnership regarding the business and affairs of the Partnership. In addition, by order of the Bankruptcy Court, the Equity Security Holders Committee (the "Investors Committee"), a committee originally formed during the bankruptcy proceedings to represent the class comprised of the limited partners of the Debtor Investor Partnerships, was given an ongoing oversight role in connection with the deferral of payments contemplated by the Plan to be made to the Limited Partners, and the use thereof to pay for certain costs and expenses for the administration and operation of the Partnership.

Applicants' Legal Conclusions

1. Applicants seek an exemption under section 6(c) exempting the Partnership from all provisions of the Act and rules thereunder, retroactive to July 1, 1990. Section 6(c) provides that the SEC may exempt any person, security or transaction from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The exemption of the Partnership from all provisions of the Act is both necessary and appropriate in the public interest because investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form. Further, the limited partnership form insulates each limited partner from personal liability, limits his financial risk to the amount he has invested in the program, and permits the pass-through to the limited partner, on his individual tax return, of his proportionate shares of the income, Tax Credits, and losses from the investment.

3. The Partnership operates in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (Aug. 9, 1974) ("Release No. 8456"). The release lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for such an exemption: (a) "interests in the issuer should be sold only, to persons for whom investment in limited profit, essentially tax-shelter, investments would not be unsuitable"; and (b) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company."

4. Suitability standards were imposed on the sale of the original limited partnership interests in the Debtor Investor Partnerships. While such suitability standards varied according to applicable state securities laws, limited partnership interests were sold only to investors who, at minimum, had an annual gross income of at least approximately $35,000 and a net worth (exclusive of home, furnishings and automobiles) of at least $75,000. Limited partnership interests in the Partnership may be transferred only to investors who meet these investor suitability standards, and such transfers are in any event subject to the consent of the General Partner in its sole discretion. Applicants believe that such suitability standards are consistent with the requirements in Release No. 8456 and are consistent with the guidelines of those states which prescribe suitability standards.

5. All current compensation agreements between the Partnership and the General Partner are disclosed in Form 10K, filed under the 1934 Act. The General Partner believes that all such compensation is no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. While the General Partner's compensation as general partner consists only of an interest in the Partnership's profits and losses (including tax credits and other tax items), which applicants believe to be within the guidelines set forth in the Statement of Policy of the North American Securities Administrators Association, Inc. with respect to real estate programs in the form of limited partnership (the "NASAA Guidelines"), compensation received by the General Partner in its capacity as Independent Manager currently exceeds the levels specified in the NASAA Guidelines for "Program Management Fees." However, the Independent Manager's role, and such compensation, arose in connection with services mandated by the Plan and are not directly comparable to typical management services or Program Management. In addition, such compensation was negotiated at arms' length and under the supervision of the Bankruptcy Court. Commencing in 1995, the Management Agreement provides for a reduction in the Independent Manager's fee to a level which applicants believe to be within the limits for Program Management Fees set forth in the NASAA Guidelines.

6. The organizational documents of the Partnership were subject to the scrutiny of the Bankruptcy Court through the confirmation process. Applicants assert that the requirements of confirmation are designed to provide assurance of the same considerations of fair dealing as are promoted by the Act and required by Release 8456. Applicants believe that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership's governing instruments, the oversight of the Bankruptcy Court and the Investors Committee, and pertinent governmental regulations imposed by various federal, state, and local agencies provide protection to investors in the Partnership comparable to the provided by the Act.

7. Applicants assert that the partnership would have qualified for exemption under section 6(c) of the Act had an application therefor been made at the time of formation of the Partnership. the Partnership's failure to apply for an exemption at the time of its formation was attributable primarily to the focus of its management and counsel of the bankruptcy and related lack of resources to consider issues not directly related thereto. The Partnership has at all time since its formation been primarily engaged in the ownership of housing projects for low and middle income persons. Particularly in view of the illiquid nature of the limited partnership interests in the Partnership and of its investments in the Operating Partnerships, applicants assert that the delay in applying for such exemption has had no adverse effect on the Partnership's Limited Partners and that the purposes of the Act were not compromised by such delay.

8. The lack of any public market or any significant number of transfers of limited partnership interests in the Partnership assures that any risks of ownership of interests in the Partnership have been almost entirely confined to those individuals who originally purchased interests in the Debtor Investor Partnerships and who were not entitled to the protections of the Act in connection with such purchase. The provisions of the partnership agreement of the Partnership restricting transferability of limited partnership interests as described above make it very likely that this will continue to be the case.

9. Applicants believe that the Partnership and its Limited Partners will be prejudiced if the SEC does not grant retroactive relief. The failure of the

SEC to grant retroactive relief will be subject to disclosure in the Partnership's offering documents, and the resulting uncertainty could effect both the marketability of the proposed interests in the Secured Loans and the interest rate payable by the Partnership (and indirectly its Limited Partners) with respect to such interest. Such uncertainty could have particular impact in this case, since in order to preserve the priority of the first security interest securing the Secured Loans, the interests to be offered consist of interests in obligations of the Partnership entered into in July 1990 in connection with the confirmation of the Plan. If retroactive relief is not granted, the enforceability of those obligations might be called into question, notwithstanding that they were entered into pursuant to the Plan, by reason of section 47(b) of the Act, which provides that a contract made or involving performance in violation of the Act and the rules or regulations thereunder is unenforceable, absent certain findings by a court. Such uncertainty also could have the further negative impact on the Partnership and its Limited Partners of reducing the options available to the Partnership to make other changes in its contractual arrangements which might have the effect of reducing expenses or increasing its returns.

10. The bankruptcy of the Debtor Investor Partnerships and subsequent formation of the Partnership pursuant to the Plan, which resulted in the distribution of limited partnership interests in the Partnership to more than 100 investors, had the effect of exchanging interests in individual, insolvent Operating Partnerships previously held by them, for a proportionate interest in all of the Operating Partnerships, based on an allocation formula contained in the Plan thereby spreading the risks of investment by the Limited Partners among a broad pool of Projects furnishing low to moderate income housing. The Plan also made possible the continued solvency of most of the Operating Partnerships. Applicants believe such exchange was, if anything, in furtherance of the purposes of the Act.

11. The Partnership's failure to file for an exemption at the time of its formation was inadvertent, and attributable in large part to a lack of resources. Applicants respectfully submit that such lack of resources should not operate to the detriment of the Partnership and its Limited Partners, particularly in view of the factors enumerated above which minimize any potential damage from failure to apply for exemption in a timely fashion.

12. On the basis of the foregoing, applicants assert that retroactive relief requested would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Condition

Applicants agree that any order granting the requested relief shall be subject to the following condition:

The Partnership shall not make any future purchases of interests in Investor Partnerships. Any further investments by the Partnership in low and moderate income housing shall be made only through the direct ownership of limited partnership interests in Operating Partnerships.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16561 Filed 7–12–93; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 132
Tuesday, July 13, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 15, 1993, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Common carrier.	TITLE: Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act (CC Docket No. 93-22, RM-7990). SUMMARY: The Commission will consider adoption of a *Report and Order* amending the rules governing pay-per-call services to conform with the requirements of the Telephone Disclosure and Dispute Resolution Act.
2	Office of Engineering and Technology.	TITLE: Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (ET Docket No. 92-9, RMs-7981 and 8004). SUMMARY: The Commission will consider adoption of a *Second Report and Order* concerning a reallocation and rechannelization of five bands above 3 GHz.
3	Office of Engineering and Technology.	TITLE: Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (ET Docket No. 92-9, RMs-7981 and 8004). SUMMARY: The Commission will consider adoption of a *Third Report and Order and Memorandum Opinion and Order* addressing the regulatory framework for the implementation of emerging technologies in the 2 GHz band.
4	Private radio.	TITLE: Amendment of Part 97 of the Commission's Rules to Relax the Restrictions on the Scope of Permissible Communications in the Amateur Service (PR Docket No. 92-136, RMs-7894, 7895 and 7896). SUMMARY: The Commission will consider adoption of a *Report and Order* concerning whether to relax the restrictions on the communications that may be transmitted by amateur stations.
5	Mass media	TITLE: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation. SUMMARY: The Commission will consider adoption of a *Notice of Proposed Rulemaking* proposing requirements to govern cost-of-service showings by cable operators.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93-16642 Filed 7-9-93; 8:45 am]

BILLING CODE 6717-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, July 16, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16648 Filed 7-9-93; 11:25 am]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 19, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16692 Filed 7-9-93; 2:10 pm]

BILLING CODE 6210-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, July 20, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6108 Special Investigation Report: Commercial Space Launch Incident—Launch Procedure Anomaly, Orbital Sciences Corporation, Pegasus/SCD-1, 80 Nautical Miles East of Cape Canaveral, Florida, February 9, 1993.

5699A Railroad Accident/Incident Summary Report: Derailment of Amtrak Train 87, Silver Meteor, While on CSX Transportation Track, Palatka, Florida, December 17, 1991.

6099 Recommendations to the Federal Aviation Administration, the American Association of Airport Executives, and the Airports Association Council International-North America to Urge Airport Operators to Inspect Aircraft Operating Areas for Soil Erosion Near Pipelines.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: July 9, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93–16661 Filed 7–9–93; 1:10 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 12, 19, 26, and August 2, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 12

Wednesday, July 14

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) a. Georgia Power Company—Partial Director's Decision Under 10 C.F.R. § 2.206 (Tentative) (Contact: Steve Burns, 301–504–2184)

Week of July 19—Tentative

Tuesday, July 20

10:00 a.m.
Briefing on Options for Addressing Shutdown and Low Power Risk Issues (Public meeting) (Contact: Ashok Thadani, 301–504–2884)

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

2:00 p.m.
Briefing on Overview of NRC Research Program (Public meeting) (Contact: George Sege, 301–492–3904)

Week of July 26—Tentative

Thursday, July 29

10:00 a.m.
Briefing on Options for Changes to Regulation of Nuclear Medicine (Public meeting) (Contact: Darrel Nash, 301–504–3610)

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of August 2—Tentative

Monday, August 2

2:00 p.m.
Briefing on Status of Part 100 Rule Change and Proposed Update on Source Term and Related Issues (Public meeting) (Contact: Leonard Soffer, 301–492–3916)

Tuesday, August 3

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meeting call (recording)—(301) 504–1292

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: July 9, 1993.

William M. Hill,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–16696 Filed 7–9–93; 2:32 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
July 13, 1993

Part II

Department of Defense

Department of the Army

32 CFR Part 501

Emergency Employment of Army and Other Resources; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 501

Emergency Employment of Army and Other Resources

AGENCY: Office of the Army Deputy Chief of Staff for Operations and Plans, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army announces a revision of 32 CFR Part 501, Employment of Troops in Aid of Civil Authorities, in order to bring it in line with changes to Army Regulation 500–50, Civil Disturbances. When published as a final rule it will replace the information currently contained in 32 CFR part 501.

DATES: Comments must be submitted in writing not later than August 12, 1993.

ADDRESSES: Comments should be sent to: Office of the Deputy Chief of Staff for Operations and Plans, ATTN: DAMO–ODS/LTC Marksteiner, Pentagon, Washington, DC 20310–0400

FOR FURTHER INFORMATION CONTACT: LTC Marksteiner, (703) 697–4331.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is not affected by Executive Order 12291.

Regulatory Flexibility Act

The Regulatory Flexibility Act has no bearing on this proposed rule.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 501

Armed forces, Civil disorders, Intergovernmental relations, Law enforcement, Military law.

It is proposed to revise part 501 to read as follows:

PART 501—CIVIL DISTURBANCES

Sec.

Authority: U.S.C. 331, 332, 333 3013.

§ 501.1 Basic policies.

(a) The protection of life and property and the maintenance of law and order within the territorial jurisdiction of any State are the primary responsibility of State and local civil authorities. Generally, Federal Armed Forces are committed after State and local civil authorities have utilized all of their own forces and are unable to control the situation, or when the situation is beyond the capabilities of State or local civil authorities, or when State and local civil authorities will not take appropriate action. Commitment of Federal Armed Forces will take place only—

(1) Under the provisions of this part, and

(2) When the Secretary of the Army, pursuant to the orders and policies of the Secretary of Defense and the President, has generally or specifically so ordered, except in cases of emergency. See § 501.2.

(b) The Secretary of the Army has been designated as the Executive Agent for the Department of Defense in all matters pertaining to the planning for, and employment of military resources in the event of civil disturbances. The Department of the Army is responsible for coordinating the functions of all the Military Services in this activity for the Executive Agent. The Secretary of the other Military Services are responsible for providing such assistance as may be requested by the Executive Agent.

(c) Formal requests by a State for the assistance of Federal Armed Forces must originate with the legislature of the State concerned, or with the Governor if the legislature cannot be convened, and should be made to the President. The Attorney General of the United States has been designated by the President to receive and coordinate preliminary requests from the States for Federal military assistance. Should such an application, either formal or preliminary, be presented to a local commander, that commander will request the person making the application to transmit his/her request to the Attorney General.

(d) No employment orders will be issued by the Department of the Army until the President directs the Secretary of Defense to take the necessary action. In practice this direction to the Secretary of Defense follows issuance of the proclamation required by law demanding that the insurgents cease and desist from acts of violence and disperse and retire peaceable forthwith. See 10 U.S.C. 334. This requirement does not preclude the alerting of forces and, if necessary, the repositioning of forces by the Executive Agent. However, repositioning of more than a batallion-sized unit will be undertaken only with the informal approval of the President.

(e) Units and members of the Army Reserve on active duty may be employed in civil disturbance operations in the same manner as active forces. Units and members of the Army Reserve may be ordered to active duty for this purpose by the President as provided by law. Members of the Army Reserve, with their consent, may be ordered to active duty for civil disturbance operations under the provisions of 10 U.S.C. 672(d).

(f) Persons not normally subject to military law taken into custody by the military forces incident to the use of Armed Forces, as contemplated by this part, will be turned over, as soon as possible, to the civil authorities.

§ 501.2 Emergency.

(a) In cases of sudden and unexpected invasion or civil disturbance, including civil disturbances incident to earthquake, fire, flood, or other public calamity endangering life or Federal property or disrupting Federal functions or the normal processes of Government, or other equivalent emergency so imminent as to make it dangerous to await instructions from the Department of the Army requested through the speediest means of communications available, an officer of the active Army in command of troops may take such action, before the receipt of instructions, as the circumstances of the case reasonably justify. However, in view of the availability of rapid communications capabilities, it is unlikely that action under this authority would be justified without prior Department of the Army approval while communications facilities are operating. Such action, without prior authorization, of necessity may be prompt and vigorous, but should be designed for the preservation of law and order and the protection of life and property until such time as instructions from higher authority have been received, rather than as an assumption of functions normally performed by the civil authorities.

(b) Emergency fire fighting assistance may be provided pursuant to agreements with local authorities; emergency explosive ordnance disposal service may be provided in accordance with paragraph 18, Army Regulation 75–15, Responsibilities and Procedures for Explosive Ordnance Disposal. Army Regulation 75–15 is available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161.

§ 501.3 Command authority.

(a) In the enforcement of the laws, Federal Armed Forces are employed as a part of the military power of the United States and act under the orders

of the President as Commander in Chief. When commitment of Federal Armed Forces has taken place, the duly designated military commander at the objective area will act to the extent necessary to accomplish his mission. In the accomplishment of his mission, reasonable necessity is the measure of his/her authority, subject of course, to instructions he/she may receive from his/her superiors.

(b) Federal Armed Forces committed in aid of the civil authorities will be under the command of, and directly responsible to, their military and civilian superiors through the Department of the Army chain of command. They will not be placed under the command of an officer of the State defense Forces or of the National Guard not in the Federal service, or of any local or State civil official; any lawful or unauthorized act on the part of such troops would not be excusable on the ground that it was the result of an order received from any such officer or official. As directed by the Army Chief of Staff, service will be provided in accordance with paragraph 3–2, Army Regulation 75–15.

§ 501.4 Martial law.

It is unlikely that situations requiring the commitment of Federal Armed Forces will necessitate the declaration of martial law. When Federal Armed Forces are committed in the event of civil disturbances, their proper role is to support, not supplant, civil authority. Martial law depends for its justification upon public necessity. Necessity gives rise to its creation; necessity justifies its exercise; and necessity limits its duration. The extent of the military force used and the actual measures taken, consequently, will depend upon the actual threat to order and public safety which exists at the time. In most instances the decision to impose martial law is made by the President, who normally announces his decision by a proclamation, which usually contains his instructions concerning its exercise and any limitations thereon.

§ 501.5 Protection of Federal property.

The right of the United States to protect Federal property or functions by intervention with Federal Armed Forces is an accepted principle of our Government. This form of intervention is warranted only where the need for protection exists and the local civil authorities cannot or will not give adequate protection. This right is exercised by executive authority and extends to all Federal property and functions.

§ 501.6 End of commitment.

The use of Federal Armed Forces for civil disturbance operations should end as soon as the necessity therefor ceases and the normal civil processes can be restored. Determination of the end of the necessity will be made by the Department of the Army after coordination with the Department of Justice.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–16185 Filed 7–12–93; 8:45 am]

BILLING CODE 3710–08–M3

federal register

Tuesday
July 13, 1993

Part III

Department of Defense

Department of the Army

32 CFR Part 552

Improper Associations of Personnel on Ft. Jackson, SC; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

Improper Associations of Personnel on the Installation of Ft. Jackson, SC

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule.

SUMMARY: This action establishes 32 CFR Part 552, Subpart K, Improper Associations of Personnel and authenticates Fort Jackson Regulation 600–5. This subpart contains the association procedures between permanent party soldiers or civilian employees and soldiers-in-training, receptees or holdovers on the installation of Fort Jackson, South Carolina.

DATES: Written comments must be submitted not later than August 12, 1993.

ADDRESSES: Comments should be sent to: U.S. Army Training Center and Fort Jackson, Office of the Staff Judge Advocate, Fort Jackson, SC 29207–5000.

FOR FURTHER INFORMATION CONTACT: CPT Thomas M. Gagne, Trial Counsel, (803) 734–6811.

SUPPLEMENTARY INFORMATION: This subpart applies to all permanent party soldiers, civilian employees, soldiers-in-training, receptees and holdovers, as defined herein, on or off Fort Jackson. Any violation of this part by a permanent party soldier, except for a violation of § 552.136, provides a basis for punitive action under the Uniform Code of Military Justice against the violating permanent party soldier. Any violation of this subpart by a civilian employee, except for a violation of § 552.136, provides a basis to impose disciplinary procedures contained in applicable Fort Jackson, Training and Doctrine Command, Army or Department of Defense directives and regulations against the violating civilian employee. Violation of this subpart by a soldier-in-training, receptee or holdover does not provide a basis for punitive action under the Uniform Code of Military Justice against the violating soldier-in-training, receptee or holdover.

Executive Order 12291

This proposed rule is not affected by Executive Order 12291.

Regulatory Flexibility Act

The Regulatory Flexibility Act has no bearing on this proposed rule.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 552, Subpart K

Military personnel, Government employees, Fraternization.

PART 552—[AMENDED]

Accordingly, 32 CFR part 552, subpart K is added to read as follows:

Subpart K—Improper Association of Personnel—Ft. Jackson

Sec.

Authority: 10 U.S.C. Ch. 47.

Subpart K—Improper Association of Personnel—Ft. Jackson

§ 552.131 Purpose.

This subpart prohibits improper associations between permanent party soldiers or civilian employees and soldiers-in-training, receptees or holdovers. Improper association is harmful to mission accomplishment. The goal of this subpart is to establish and maintain the training environment necessary to develop pride, motivation, military skills, discipline and confidence in soldiers-in-training, receptees and holdovers.

§ 552.132 Scope.

This subpart applies to all permanent party soldiers, civilian employees, soldiers-in-training, receptees and holdovers, as defined herein, on or off Fort Jackson. Any violation of this part by a permanent party soldier, except for a violation of § 552.136, provides a basis for punitive action under the Uniform Code of Military Justice against the violating permanent party soldier. Any violation of this subpart by a civilian employee, except for a violation of § 552.136, provides a basis to impose disciplinary procedures contained in applicable Fort Jackson, Training and Doctrine Command, Army or Department of Defense directives and regulations against the violating civilian employee. Violation of this subpart by a soldier-in-training, receptee or holdover does not provide a basis for punitive action under the Uniform Code of Military Justice against the violating soldier-in-training, receptee or holdover.

§ 552.133 Definitions.

(a) *Improper association.* Any actual or attempted personal relationship, association, contact or socializing between any permanent party soldier or civilian employee and any soldier-in-training, receptee or holdover, on or off Fort Jackson, that is not required to accomplish the training mission. This includes, but is not limited to the following actual or attempted personal relationships, associations, contacts, or socializing between any permanent party soldier or civilian employee and any soldier-in-training, receptee or holdover:

(1) Gambling or wagering.

(2) Touching of a sexual nature, handholding, embracing, caressing, dating or any other meeting that is not official in nature, kissing, engaging in sexual intercourse, sexual fondling or sodomy.

(3) Using sexually explicit, suggestive, or obscene language or gestures.

(4) Accepting or providing gifts or favors.

(5) Loaning or borrowing money.

(6) Drinking or providing alcoholic beverages.

(7) Dancing.

(8) A permanent party soldier or civilian employee permitting or inviting any soldier-in-training, receptee, or holdover to enter into or ride in a privately-owned vehicle that is owned, operated, maintained, or occupied by a permanent party soldier or civilian employee; a soldier-in-training, receptee or holdover entering into or riding in a privately-owned vehicle that is owned, operated, maintained, or occupied by a permanent party soldier or civilian employee. These prohibitions shall not preclude transportation of soldiers-in-training, receptees or holdovers in cases of medical or other emergencies when military transportation is not available, or in specific cases when authorized by a company commander or superior commander.

(9) A permanent party soldier or civilian employee entering any living quarters or latrines designed for soldiers-in-training, receptees or holdovers of the opposite sex, unless required by official duties, or in the performance of police or fire-fighting duties, or in the case of an emergency; soldiers-in-training, receptees or holdovers inviting any permanent party soldier or civilian employee to enter any living quarters or latrines designed for soldiers-in-training, receptees or holdovers of the opposite sex, unless required by official duties, or in the performance of police or fire-fighting duties, or in the case of an emergency.

(10) A permanent party soldier or a civilian employee permitting or inviting any soldier-in-training, receptee, or holdover to enter into any living quarters, on or off Fort Jackson, that are assigned to, occupied, rented, owned, or maintained by a permanent party soldier or a civilian employee, unless required by official duties, or in the case of an emergency; a soldier-in-training, receptee or holdover entering into any living quarters, on or off Fort Jackson, that are assigned to, occupied, rented, owned, or maintained by a permanent party soldier or a civilian employee, unless required by official duties, or in the case of an emergency.

(11) Attendance by a permanent party soldier or civilian employee at a party or social gathering at which a soldier-in-training, receptee or holdover is present, unless such party or social gathering is sponsored by a military unit on Fort Jackson and permanent party soldiers or civilian employees, as well as soldiers-in-training, receptees, or holdovers have been invited by the military unit sponsoring the party or social gathering.

(b) *Permanent party soldier.* (1) Any soldier, other than a soldier-in-training, receptee or holdover, as defined in paragraphs (d), (e), and (f) of this section.

(i) Assigned or attached to any military organization at Fort Jackson or

(ii) Performing duty at Fort Jackson, including National Guard and Reserve soldiers on active duty or active duty for training.

(2) Soldiers who have completed accession processing into active duty at Fort Jackson from a Reserve/National Guard status, and who have previously completed basic training and a Military Occupational Specialty (MOS)-producing school, and who are being retained in the 120th Adjutant General (AG) Battalion (Reception) awaiting receipt of a security clearance prior to attending an additional MOS-producing school which requires a security clearance.

(3) Prior service soldiers assigned to the 120th AG Battalion (Reception) who are pending port call instructions for an overseas assignment.

(4) Soldiers in the grade of E–4 and above in the 4th Training Brigade who are attending reclassification training.

(5) Soldiers assigned or attached to any military organization at any installation who are performing temporary duty (TDY) at Fort Jackson.

(6) Soldiers at Fort Jackson for mobilization, demobilization, or Estimated Time of Separation (ETS) processing.

(7) Holdovers who have been designated by bridage commanders, in writing, as permanent party soldiers.

(c) *Civilian employee.* All non-military, i.e., civilian persons employed by, working at, assigned to or attached to any organization or activity at Fort Jackson, including, but not limited to, personnel who are temporary or permanent overhires, part-time employees, seasonal (summer hire) workers, employees of non-appropriated fund instrumentalities, contractors, and employees of contractors.

(d) *Receptee.* All Active Army, Army National Guard, and Army Reserve personnel processing through the 120th AG Battalion (Reception), for entry into Basic Combat Training (BCT) or Advanced Individual Training (AIT), except those 4th Brigade personnel, E–4 and above, described in paragraph (b)(3) of this section.

(e) *Soldier-in-training.* All Active Army, Army National Guard, and Army Reserve personnel assigned or attached to Fort Jackson for the purpose of attending BCT or AIT.

(f) *Holdover.* Any graduate of BCT or AIT who has not departed Fort Jackson for administrative reasons, any nongraduate of BCT or AIT who is in remedial training after course/cycle graduation, or any soldier who is removed from BCT or AIT for administrative reasons; provided, however, that brigade commanders may designate, in writing, a holdover as a permanent party soldier, in which case such holdover is considered a permanent party soldier as described in paragraph (b)(6) of this section.

§ 552.134 Improper associations prohibited.

Improper associations between any permanent party soldier or civilian employee and any soldier-in-training, receptee, or holdover is prohibited.

§ 552.135 Reporting procedures.

All suspected violations of this subpart will be reported to the unit commander, or directors/heads of staff agencies of personnel involved, or to the Military Policy.

§ 552.136 Dissemination.

Personnel will be informed of the provisions of this subpart as follows:

(a) Permanent party soldiers—within five working days of assignment or attachment to Fort Jackson and again semi-annually during the months of March and September. Those permanent party soldiers at Fort Jackson for mobilization/demobilization or ETS processing will be informed within one working day of reporting to Fort Jackson. Personnel present at Fort Jackson for TDY will be informed within one working day of reporting to Fort Jackson.

(b) Civilian employees—within five working days of assignment or attachment to Fort Jackson and again semi-annually during the months of March and September.

(c) Soldiers-in-training—prior to beginning each new training cycle.

(d) Receptees—during processing at the TAG Battalion (Reception).

(e) Holdovers—upon graduation or upon release or removal from training.

§ 552.137 Responsibilities.

Major subordinate commanders and directors/heads of staff agencies will establish procedures to ensure compliance with this subpart.

§ 552.138 Management Information Requirements (MIR).

This proposed rule does not require an MIR.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

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Part IV

Environmental Protection Agency

40 CFR Part 63
Hazardous Air Pollution: Proposed Regulations Governing Equivalent Emission Limitations by Permit

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-4575-9]

Hazardous Air Pollution: Proposed Regulations Governing Equivalent Emission Limitations by Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The proposed rule would implement section 112(j) of the Clean Air Act (Act), as amended. The proposed rule establishes requirements and procedures for the owners or operators of a major source of hazardous air pollutant(s) (HAPs) to follow in order to comply with section 112(j). The proposed rule also contains guidance for reviewing agencies in implementing section 112(j), to maintain consistency in these reviews. After the effective date of a title V permit program in a State (but not before May 15, 1994), each owner or operator of a major source in a source category for which the EPA was scheduled to, but failed to promulgate a maximum achievable control technology (MACT) standard would be required to submit an application for a permit, permit revision, or permit renewal containing case-by-case MACT emission limits that are at least as stringent as the Federal MACT standard would have been.

DATES: *Comments.* Comments must be received on or before August 27, 1993.

Public Hearing. If anyone contacts the EPA requesting a public hearing by July 27, 1993, a public hearing will be held on August 11, 1993, beginning at 10 a.m. Persons interested in attending the hearing should call Theresa Adkins at (919) 541-5645 to ensure that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by July 27, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attention Docket Number A-93-32 (see Docket section below), room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts the EPA requesting a public hearing, it will be held at the EPA's Environmental Research Center auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Theresa Adkins, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541-5645.

Docket. Docket No. A-93-32, containing supporting information used in developing the proposed rule is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine Kaufman, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone (919) 541-0102.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

The purpose of this notice is to provide the public with the opportunity to comment on the proposed rule implementing the requirements of section 112(j) of the Act. This preamble is organized to serve readers needing (1) an overview of the proposed requirements of the section 112(j) program, and (2) a detailed discussion of the alternatives considered in developing the proposed requirements.

The first section provides an overview of the requirements of the regulations being proposed today.

The second section provides background information on section 112(j) in the context of the 1990 amendments to the Act.

The third section provides a detailed discussion of the requirements of the proposed rule and the rationale for these requirements, including other regulatory options that were considered.

The fourth section of this preamble discusses the relationship of the proposed requirements of section 112(j) of the Act with other requirements of the Act under other subsections of section 112.

The fifth section of this preamble demonstrates that the proposed rulemaking is consistent with a number of federal administrative requirements.

This preamble makes use of the term "State," usually meaning the State air pollution control agency which would be the permitting authority implementing the section 112(j) program. The reader should assume that use of the word "State" also applies, as defined in section 302(d) of the Act, to the District of Columbia and territories of the United States, and may also include reference to a local air pollution control agency. These agencies can either be the permitting authority for the area of their jurisdiction or assist the State or EPA in implementing the section 112(j) program. In some cases, the term "reviewing agency" is used and can refer to both State agencies and to local agencies (when the local agency directly makes the determinations or assists the State in making the determinations). The term "reviewing agency" may also apply to the EPA, where the EPA is responsible for the program.

The proposed rule and preamble make a number of references to three regulations which have not yet been proposed. The first is subpart A to 40 CFR part 63. This subpart would provide general provisions that would apply to all subparts of part 63, including the proposed rule. The EPA expects these general provisions to be promulgated before today's proposed rule is promulgated. The second is the rule governing constructed, reconstructed, or modified major sources, which EPA intends to propose in additional sections of subpart B to 40 CFR part 63. The third is the federal

operating permits program which EPA intends to promulgate as 40 CFR part 71. Today's proposed rule and this preamble refer to "Part 70 or Part 71" permits. At this time, only 40 CFR part 70 has been promulgated, but it is expected that part 71 will be promulgated before the promulgation date of today's proposed rule.

I. Summary of Proposed Rule

The rule proposed today would implement the requirements of section 112(j) of the Clean Air Act, as amended in 1990. Section 112(j) establishes requirements for regulation of major sources of hazardous air pollutants in the event that EPA lags more than 18 months behind schedule in issuing a control technology standard for an industry.

Section 112 requires EPA to set maximum achievable control technology (MACT) standards for all categories of major sources of hazardous air pollutants by November 15, 2000. EPA is required to issue a schedule for regulating all source categories within two, four, seven, or ten years of enactment. The Agency on September 24, 1992 proposed the draft source category schedule for standards in the Federal Register.

Section 112(j) would be triggered if EPA has failed to promulgate a MACT standard for a source category 18 months after the deadline listed in the final schedule. Under the proposed rule, the owner or operator of each major source with emission units in that category would have to apply for a case-by-case (facility-specific) determination of maximum achievable control technology. Section 112(j) requirements apply in a state beginning on the effective date of a permit program established under title V of the Act, but not before May 15, 1994.

Case-by-case MACT determinations would be made by the permitting authority. This generally would be the state air pollution control agency, but in some circumstances could be EPA or a local air pollution control agency.

Once a source category becomes subject to 112(j), the proposed rule would require MACT for all emission units in that source category that are:

- Part of an existing major source
- Part of a new major source
- New emission units added to a major source

An emission unit would be considered "new" if construction or reconstruction commenced after the section 112(e) deadline. The section 112(e) deadline is the scheduled date for issuing a national MACT standard applicable to those emission units.

The proposed rule would require owners or operators of new and existing sources covered by 112(j) to apply for case-by-case determination of MACT emissions limitations by the permitting authority. Section 63.53 specifies the required contents of these applications.

Permitting authorities would determine MACT emission limitations for emission units based on principles established in § 63.56 and a more detailed guidance document titled "Draft Guidelines for MACT Determinations," which the EPA is making available today for comment. (The Draft Guidelines are also available through the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or at (703) 487–4650. The NTIS document number is PB93–183283). Comments on the Draft Guidelines should be submitted together with comments on today's rule. The Draft Guidelines contain procedures for evaluating whether a control technology is consistent with the minimum requirements established in section 112(d) of the Act. Because section 112(j)(5) requires that case-by-case MACT determinations be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)," EPA believes that consideration of the Guidelines is a crucial component of the 112(j) case-by-case MACT determination process.

Permits for new and existing sources subject to section 112(j) would have to contain the elements listed in § 63.54(c). (Today's proposal includes requirements for the substantive terms of permits and the content of permit applications because the operating permits rules do not include similar requirements).

Existing major sources would be required to comply with their MACT emissions limitations by the date set by the permitting authority, which can be no more than three years after permit issuance. New sources would have to comply with their MACT limits at permit issuance.

Under other federal or state regulations, many new sources covered by section 112(j) will be required to obtain approval of the design of their hazardous air pollutant control equipment prior to construction. Preconstruction approval will be mandatory for: (1) New sources that are subject to forthcoming regulations implementing section 112(g) of the Act, and (2) new sources in states that require operating permit issuance or revision prior to construction.

For new sources not required to undergo preconstruction review, states may elect to provide a preconstruction MACT determination process containing elements set out in § 63.54. Procedures for incorporating such emission limitations subsequently into operating permits are described in § 63.55. Another voluntary option for these sources is to obtain an operating permit or permit revision prior to construction, so long as the State's part 70 operation permit program provides for that option.

Finally § 63.57 of today's proposal establishes requirements for complying with a 112(d) standard that is promulgated subsequent to a case-by-case MACT determination under 112(j).

The term "emission unit" in the proposed rule corresponds to the term "source" in section 112 of the statute. EPA has chosen to use "emission unit" rather than "source" to avoid creating any misperception that the section 112(j) rule could somehow constrain the Agency's flexibility to define source in other rulemakings under section 112, including national MACT standards for each source category to be issued under subsection (d) or (h).

II. Background Discussion

A. Clean Air Act Amendments. Section 112

The Clean Air Act amendments of 1990 (Public Law 101–549) contain major changes to section 112 of the Act pertaining to the control of hazardous air pollutant (HAP) emissions. Section 112(b) includes a HAP list that is composed of 189 chemicals, including 172 specific chemicals and 17 compound classes. Section 112(c) requires publication of a list of source categories and subcategories of major sources emitting these HAPs, and of area sources warranting regulation. Section 112(d) requires promulgation of emission standards for each listed source category or subcategory according to a schedule set forth in section 112(e).

B. Clean Air Act Amendments. Provisions for Equivalent Emission Limitation by Permit

1. General Requirements of Section 112(j)

The amendments to section 112 include new section 112(j). This section is entitled "Equivalent Emission Limitation by Permit." Subsection 112(j)(2) of the Act provides that section 112(j) applies if EPA misses a deadline for promulgation of a standard under 112(d) established in the "source category schedule for standards":

In the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e)(1) and (3), and beginning 18 months after such date (but not prior to the effective date of a permit program under title V), the owner or operator of any major source in such category or subcategory shall submit a permit application.

The owner or operator of a major source subject to the provisions of section 112(j) is required under subsection 112(j)(3) to submit a complete permit application 18 months after the missed promulgation deadline:

By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit.

Subsection 112(j)(3) also requires that EPA must establish requirements for permit applications, including content and criteria for the reviewing agency to determine completeness. In addition, subsection 112(j)(3) provides that if the reviewing agency deems the application incomplete, or disapproves the application, then the applicant has up to six months to revise and resubmit the application.

Subsection 112(j)(5) establishes a requirement for case-by-case MACT determinations:

The permit shall be issued pursuant to title V and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d).

Subsection 112(j)(5) also establishes compliance dates:

No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i).

If the applicable criteria for voluntary early reductions, established under section 112(i)(5), are met, then this alternative emission limit satisfies the requirements of section 112(j), provided that the emission reductions are achieved by the missed promulgation date.

In the event that EPA promulgates a given MACT standard for the applicable source category before the permit application is approved, the permit must reflect this standard, not the case-by-case MACT determination, and the source shall be required to comply by the date provided under subsection (i). In this case, the owner or operator of an existing source has no more than 3 years to comply, and the owner or operator of a new source must comply immediately upon issuance of the permit. However, under section 112(i)(2) any new source that commenced construction or reconstruction between proposal and promulgation of the MACT standard may elect to comply with the proposed standard for three years in lieu of the promulgated MACT standard, if the promulgated MACT standard is more stringent than the proposal.

In the event that EPA promulgates a given MACT standard after the permit containing case-by-case emission limits is issued, section 112(j)(6) allows a longer compliance period:

If the Administrator promulgates a standard under subsection (d) * * * after the date on which the permit has been issued, the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

2. Definition of Emission Unit and Applicability of New Source MACT

MACT determinations must be made on a wide variety of emitting equipment at major sources in different source categories. Today's proposed rule defines "emission unit" in a way designed to allow States broad flexibility in designing case-by-case MACT emission limitations. This flexibility is essential because of the variety of source categories, diverse in size and complexity, which may be subject to 112(j). A narrower definition of "emission unit" would make it difficult for States to tailor MACT determinations to the equipment specific to a particular source category.

One approach the EPA considered, but rejected, would be to require new source MACT only on those emission units that are in and of themselves "major" at a major source—i.e. those emission units at a major source which themselves emit at least 10 tons per year or more of a single HAP, or 25 tons per year or more of a combination of HAPs.

Prior to a missed promulgation deadline, through section 112(g) the statute clearly requires new source MACT only on constructed or reconstructed major sources. Any other equipment added to an existing major source would be a modification (unless specifically exempted from regulation by 112(g)), and would be subject to existing source MACT levels of control. However, the language of section 112(j) is somewhat different from that of 112(g). Section 112(j) does not specify that new source MACT is only applicable to new major sources.

The EPA believes that the standards developed through section 112(j) must anticipate and reflect the likely requirements of section 112(d) and 112(h). The basis for the applicability of new source MACT selected is the section 112(j)(5) requirement that case-by-case MACT standards must be:

"emission limitations for the hazardous air pollutants * * * emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)."

As discussed in section I.C. (below) of this preamble, it is the judgement of EPA that 112(j) case-by-case MACT standards must require new source MACT to be applied to those same sources to which a standard promulgated under section 112(d) would apply new source MACT. Therefore, it is necessary to determine what entity is considered a new source under section 112(d) for the purpose of implementing MACT standards.

Section 112(a) provides that "new source" shall mean a "stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source." Section 112(a)(3) gives "stationary source" the same meaning as under section 111(a), i.e. any new "building, structure, facility, or installation"; thus the term stationary source clearly includes both major and area sources under section 112(a)(3). Section 112(d) requires MACT standards to be set for "sources," and "sources" can be both major and area. Once there is a 112(d) standard in place, any new source will be required to meet new source MACT emission limits, as defined by the standard.

If, however, the language of section 112(g) is interpreted as dispositive as to whether new or existing source MACT must be applied to any given increase in emissions, new sources within the definition in 112(a)(4) would escape having to comply with new source MACT under section 112(j). But if a MACT standard establishes a definition of source that would apply to a unit smaller than a "major source," this result would conflict with the requirement for section 112(j) case-by-

case MACT determinations to be "equivalent to the limitation that would apply to such source * * *." Yet under this reading, although major sources adding new non-major sources could avoid new source MACT on those new sources, if MACT is then set under 112(d) for area sources in that category, any new area source would have to meet new source MACT. This would be an anomlous result. Therefore EPA today proposes requiring new source MACT on all constructed or reconstructed emission units.

The EPA today requests comment on the desirability of requiring or not requiring new source MACT on all new emission units, and also specifically requests comment on the question of whether new source MACT should be required only on those emission units that are in and of themselves "major" at a major source.

3. Subsequent Changes to a Major Source

The EPA believes that section 112(j) emission limitations apply to subsequent changes made at major sources already complying with case-by-case MACT limitations under 112(j), where EPA has not promulgated a final standard for the source category under section 112(d). The EPA intends to require, in subpart A of this part (§ 63.5(b)(6)), that subsequent changes to a major source already complying with a section 112(d) or (h) standard shall comply with established MACT emission limitations for the source to which changes are made. Therefore requiring subsequent changes to sources already meeting case-by-case MACT emission limitations under section 112(j) would satisfy the 112(j)(5) statutory requirement that case-by-case MACT determinations under 112(j) be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)."

The EPA requests comment on this approach, as well as on the alternative approach of treating 112(j) as a one time permitting requirement applicable 18 months after EPA fails to set a relevant MACT standard, and therefore requiring subsequent changes at major sources with 112(j) permits to comply only with section 112(g).

C. Implementation Principles

In designing guidance for case-by-case MACT determinations, the EPA's thinking is guided primarily by the need for 112(j) standards to be substantively equivalent to 112(d) MACT standards. Subsection 112(j)(5) requires that a case-by-case MACT determination be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)." and subsection 112(j)(6) requires eventual compliance with subsequently promulgated 112(d) standards. Consistency in standard-setting will smooth a major source's eventual transition from compliance with 112(j) to compliance with 112(d), making implementation of toxics control easier on both States and industry.

The EPA's other major goal in establishing 112(j) requirements is to achieve and maintain consistency across section 112 programs. The EPA intends for administrative and operational requirements under 112(j) to be consistent with the requirements of section 112(g) rules for construction, reconstruction, and modification of major sources (to be proposed as §§ 63.40 through 63.48 of this subpart) and with the general provisions for section 112 (established in subpart A of this part). Section IV. A. of this preamble discusses likely overlapping requirements and major substantive differences across these programs.

III. Summary and Rationale for §§ 63.50 Through 63.57 of the Proposed Rule

This section of the preamble is a detailed discussion of the provisions of the proposed rule. This discussion outlines the rationale for the decisions that were made, and describes other options that were considered.

A. Section 63.50: Applicability

1. Section 63.50(a). Applicability

Paragraph 63.50(a) of the proposed rule indicates that the intent of the rule is to implement section 112(j) of the Act. This paragraph indicates that 112(j) applies to the owner or operator of a major source of HAPs after the "effective date of a title V program" in each State, but not before May 15, 1994.

(a) Effective date of title V. The meaning of "effective date of a title V program" is indicated in the final regulations for implementation of title V of the Act. Under these regulations, States are required to submit a permit program for review by the EPA on or before November 15, 1993. The EPA is required to approve or disapprove the permit program within one year after receiving the submittal. The EPA's program approval date is termed the "effective date."

The effective date of title V permit programs is defined in section 502(h) of the Act, which says "The effective date of a permit program, or partial or interim program, approved under * * * [title V] * * * shall be the date of promulgation." This definition is incorporated into the operating permit regulations as 40 CFR 70.4(g).

This language refers to two types of title V programs: one type where the EPA "approves" the title V program under 40 CFR part 70 and another type where the EPA "promulgates" a program under 40 CFR part 71. Programs "approved" by the EPA under part 70 will be developed by the State or local area and submitted to the EPA for approval. The language in section 502(h) of the Act makes these programs immediately effective upon EPA approval. Programs "promulgated" by the EPA under part 71 are anticipated to be rare, and they occur only where a State failed to submit a program, submitted a program that EPA could not approve, or has failed to adequately administer an approved program. For example, the EPA is required by section 502(d)(3) of the Act to promulgate and administer a title V program if, by November 1995, the EPA has not approved the State program. The language in section 112(j), because it refers to the effective date of a title V program in any State (and not by any State), means that the program will apply to both the EPA "approved" and "promulgated" programs.

The title V regulations provide for approval of "interim" and "partial" programs in certain limited circumstances. The EPA believes that, because partial programs must ensure compliance with "all requirements established under section 112 applicable to 'major sources' and 'new sources'," and interim programs must "substantially meet the requirements of [title V]," an interim or partial program would trigger the requirements of section 112(j).

(b) Major source. Section 112(j) applies only to an owner or operator of a major source. Section 112(a)(1) of the Clean Air Act defines major source as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

The determination of whether a source is major is based on the source's "potential to emit". A source's potential to emit is based on its capacity to emit hazardous air pollutants considering federally enforceable limits on that capacity. If a source's potential to emit is equal to or greater than 10 tons/yr of

a single HAP, or 25 tons/yr of any combination of HAPs, the source is a major source. The EPA is currently developing a rule to define a source's potential to emit for section 112 standards. This rule will also provide ways for an owner or operator of a source to establish voluntary, federally-enforceable restrictions to limit the source's potential to emit below the major source threshold. If a source limits its potential to emit to below the major source threshold it will not be subject to the provisions of section 112(j) as long as the source maintains its emission status.

The EPA specifically requests comment on how area sources that increase their emissions enough to become major sources after the 112(j) effective date should be treated under 112(j). The EPA is considering treating these sources as existing major sources as of the date that they achieve that major source emissions threshold, but treating any new source within the major source as a new source for the purposes of section 112(j).

4. Section 63.50(b). Relationship to State and Local Requirements

Many State and local regulatory agencies maintain regulatory programs that involve toxic air pollutant reviews for stationary sources. This paragraph clarifies that the requirements of section 112(j) do not pre-empt any requirements of these programs that are at least as stringent as the proposed rule.

5. Section 63.50(c). Retention of State Permit Program Approval

Some States may not currently have specific legislative or administrative authority sufficient to establish the regulations required by section 112(j). Paragraph 63.50(c) requires that States obtain such statutory authority as a condition of retaining their part 70 permit program approval.

B. Section 63.51: Definitions

1. Terms Defined in the General Provisions

A number of terms used in the proposed rule will be defined for all of 40 CFR part 63 by the General Provisions, to be contained in subpart A of this part. The terms which will be defined in the General Provisions include:

Administrator
Effective date
Hazardous air pollutant
Major source
Permit program
Potential to emit
Relevant standard

Today's rule contains a definition of "potential to emit" that is the same as the definition in part 70. The EPA is currently developing a definition of "potential to emit" to be included in subpart A of this part. The EPA intends that if subpart A of this part is promulgated before today's rule is promulgated, the definition included in subpart A will be included in the final rule implementing section 112(j) of the Act. The EPA requests comment on the definition of "potential to emit" for the purposes of this rule.

2. Terms Related to Maximum Achievable Control Technology

Definitions for the following terms related to levels of control technology are included in § 63.51 of the proposed rule:

Maximum Achievable Control Technology
Control Technology
Maximum Achievable Control Technology (MACT) Floor
Maximum Achievable Control Technology (MACT) Emission Limitation for Existing Sources
Maximum Achievable Control Technology (MACT) Emission Limitation for New Sources

The basis for all of these definitions is statutory language contained in section 112(d) of the Act. The term "maximum achievable control technology" appears only in section 112(g) of the Act, and does not appear elsewhere in section 112. There is, however, considerable legislative history indicating that this term refers to the level of control required by section 112(d) emission standards. This term was used in this context in the House Bill, H.R. 3030. For purposes of the definitions in the proposed rule, the EPA assumes that "maximum achievable control technology" is a reference to the "maximum degree of reduction in emissions" language contained in section 112(d)(3). The minimum control technology requirements of section 112(d), often referred to as the "MACT floor" are cited a number of times in the proposed rule. To avoid repeating these requirements each time, the regulation includes a definition of "MACT floor."

3. Terms Affecting the Extent of Coverage by Maximum Achievable Control Technology

The following terms are used to describe equipment subject to a MACT determination:

Emission point
Emission unit
New source

An "emission point," in this regulation, is defined narrowly to refer to any individual point of release to the atmosphere. However, an individual MACT determination will often be made at once for a number of emission points. The term "emission unit" is used to refer to the collection of all emission points considered when a MACT determination is made.

The term "new source" refers to an emission unit for which construction or reconstruction is commenced after the section 112(e) scheduled deadline for a relevant standard, or after proposal of a relevant standard under section 112(d) of the Act, whichever comes first. "New source" is defined in Clean Air Act section 112(a)(4) as follows:

"* * * a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source."

Section 112(j) requires States to establish case-by-case MACT limitations where EPA has failed to promulgate a relevant standard, and there may be instances where a 112(j) MACT limitation is required for a source category for which a standard has not yet been proposed under section 112(d). Since 112(j)(5) refers explicitly to case-by-case standards for new sources, the EPA has determined that the Act did not intend that the EPA's failure to propose a standard implies that no sources in that source category, no matter what the date of construction, could ever be considered "new." The EPA has therefore selected the 112(e) scheduled deadline as the date, under a 112(j) case-by-case MACT determination, most closely equivalent to the 112(d) proposal date for the purposes of defining "new source," because had EPA met the schedule in setting a standard under 112(d) the proposal could not have been any later than the date in the schedule. The EPA requests comment on this determination of what sources should apply new source MACT under 112(j).

4. Federally Enforceable

The Subpart A General Provisions will include a definition of "federally enforceable" which lists the types of limitations and conditions that are considered federally enforceable. The EPA believes that, for purposes of Subpart B requirements, this definition should contain additional language to ensure that the case-by-case determinations are practically enforceable. A more detailed discussion of EPA's rationale for this determination is contained in section III.E. of this

preamble. Section 63.51 includes a definition of "federally enforceable" that incorporates these concepts. The EPA requests comment on this definition.

C. Section 63.52: Requirements for Existing Sources

Section 63.52 of the proposed rule requires that case-by-case MACT determinations for existing sources be made through the title V permit process. The overall process for case-by-case MACT determinations for existing sources is shown in Figure 1. The owner or operator of an existing major source must submit a permit application containing case-by-case MACT demonstrations for all emission units in a source category not later than 18 months after the missed promulgation date for that source category. The State must then review and approve or disapprove the permit in accordance with the procedures and principles set out in part 70 and in § 63.55 of this proposal, and, EPA suggests, in accordance with the procedures and principles set out in the case-by-case guidance. Section 63.52(c)(1) of the proposal implements the requirement in section 112(j)(4) of the Act that if a source's permit application is incomplete or disapproved by the permitting authority, the source has up to six months to resubmit and meet the requirements of the permitting authority.

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CASE-BY-CASE MACT DETERMINATION PROCESS FOR EXISTING SOURCES

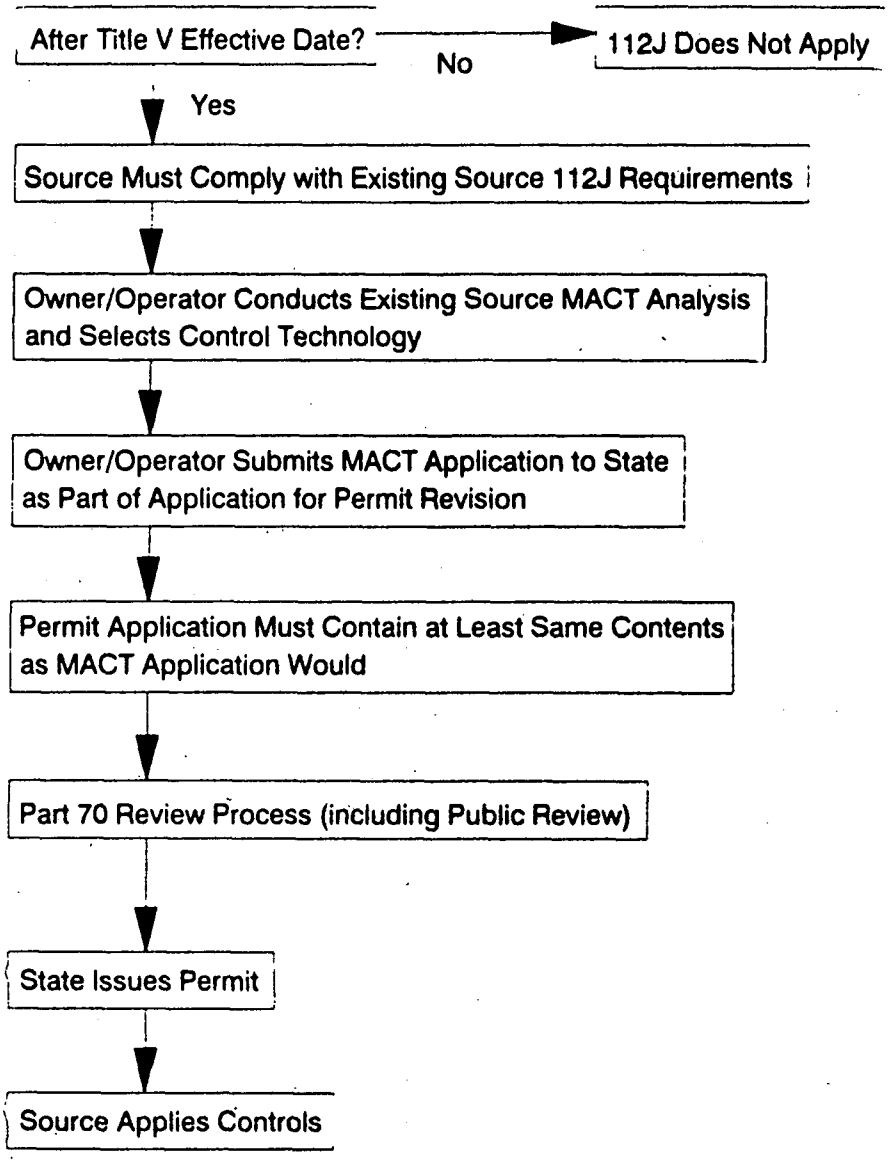

Figure 1

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For existing sources, the permitting authority at its discretion may require compliance as expeditiously as practicable, but within no more than three years from permit issuance. In addition the permitting authority may allow an extra year, on a case by case basis, where necessary to the installation of controls. The EPA believes that this approach is consistent with section 112(j)(5) which requires that MACT standards must ensure compliance ". . . immediately for new sources and, as expeditiously as practicable, but not later than the date three years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i)."

D. Section 63.53: Application Content for a Case-by-Case MACT Determination

Section 63.53 of the proposed rule describes the information the owner or operator is required to provide with an application for a MACT determination. These information requirements are designed to identify the emission units to be controlled and to demonstrate that the selected control technology for those units is consistent with or exceeds the requirements of the statute. Further information on the uses of this information are described in the Draft Guidelines for MACT Determinations.

E. Section 63.54: Preconstruction Procedures for New Sources

Section 112(j), when read together with title V, presents certain ambiguities which must be resolved in this rulemaking. Section 112(j) requires case-by-case determinations of MACT for new as well as existing sources. Section 112(j)(5) directs that case-by-case MACT is to be "equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d)." The timing for application to new sources of any standard promulgated under section 112(d) is in turn articulated in section 112(i)(1), which prohibits the construction of a new major source or reconstruction of an existing major source except where there has been a determination that the construction or reconstruction will meet the MACT standard.

However, the timing of this determination for new sources under section 112(j) is different than the timing required by the statute for section 112(d) standards. Section 112(j) requires that the permit containing the case-by-case determination of MACT be "reviewed and approved or disapproved according to the provisions of section 505" (section 112(j)(4)) and issued "pursuant to title V" (section 112(j)(5)). This conflicts with a requirement for preconstruction review for new sources subject to only section 112(j), because title V does not give EPA discretion to require applications for sources newly subject to the title earlier than 12 months after commencing operation. (Section 503(c)). Because the part 70 permit must be issued within 18 months of the application, it could be up to 30 months after operation before section 112(j) requirements would be incorporated into the title V permit.

As noted above, the EPA believes that sources subject to case-by-case MACT determinations should undergo preconstruction review. While in some cases States may require review under the part 70 program to occur in the preconstruction phase, the Act does not authorize EPA to mandate this result. It follows that, while title V is sufficiently comprehensive to handle the section 112(j) review process for existing sources, it is not broad enough in its mandatory coverage to implement section 112(j) for new sources. However, EPA believes that the preconstruction review requirements of section 112(g) will be applicable to many new sources subject to 112(j). For example, construction of all new major sources, and all new sources constructed as part of a modification of an existing major source, would require preconstruction review under section 112(g). States also have the option of establishing an accelerated voluntary administrative process for preconstruction review of new sources subject to section 112(j), to cover those sources not subject to the requirements of 112(g). EPA is strongly recommending to States that they provide these procedures.

As an alternative to relying on the preconstruction review procedures of section 112(g) for new major sources, EPA considered relying on the language of section 112(i)(1) to require preconstruction review of new sources under 112(j). However, section 112(i)(1) requires preconstruction review only for new major sources and therefore adds nothing to the preconstruction review requirement applicable under 112(g). EPA solicits comment on its decision to rely on the preconstruction review requirements of 112(g) in this proposal.

Section 63.54 of today's proposed rule describes an optional preconstruction review process for new sources not required to undergo preconstruction review under 112(g). States need not provide this additional preconstruction review opportunity. Moreover, since the preconstruction review process set forth in § 63.54 is optional, States may provide for a different process. However, an alternative process for making these determinations would not necessarily yield federally enforceable conditions. The procedures set forth in § 63.54 contain the elements EPA believes to be necessary for a federally enforceable preconstruction MACT determination. The EPA solicits comment on these minimum procedures, and in particular whether different criteria are appropriate.

As discussed below, States may further enhance this process to allow for incorporation of the MACT determination by administrative amendment.

The EPA believes that section 112(j) alone does not provide the authority to impose federally enforceable restrictions that could implement case-by-case MACT determinations. The EPA solicits comment on whether States should have the option of submitting, for approval under section 112(l), programs establishing administrative review processes that would allow the imposition of federally enforceable MACT determinations. The EPA proposed a rule under section 112(l) of the Act on May 19, 1993 (58 FR 29296). This proposal set forth the criteria for approval of state programs to implement the requirements of section 112. This proposal did not specifically address approval of state programs establishing federally enforceable preconstruction review processes for section 112(j). However, such programs could be approved under section 112(l) without difficulty wherever they could be shown to be at least as stringent as section 112(j) requirements.

The majority of new sources subject to 112(j) will be subject to section 112(g) preconstruction review requirements prior to filing their permit applications under part 70. The overall process for MACT determinations contained in § 63.54 of the proposed rule is shown in Figure 2. For those sources not subject to preconstruction review under 112(g), the optional review process begins with a MACT analysis by the owner and operator. This MACT analysis should be consistent with the Guidelines for MACT Determinations (hereafter referred to as the Guidelines), including general principles described in § 63.56(b). The owner or operator provides an application for a MACT determination to the reviewing agency (generally a State or local agency to whom authority for implementation of the program has been delegated). Requirements for the contents of this application are outlined in the Guidelines and in § 63.53. This application for a MACT determination

is then evaluated by the reviewing agency according to procedures described in § 63.54(b). If approved, the reviewing agency will issue a Notice of MACT Approval containing certain basic elements described in § 63.54(c). Provisions dealing with compliance with the requirements of the Notice of Approval are described in §§ 63.54 (d) through (h).

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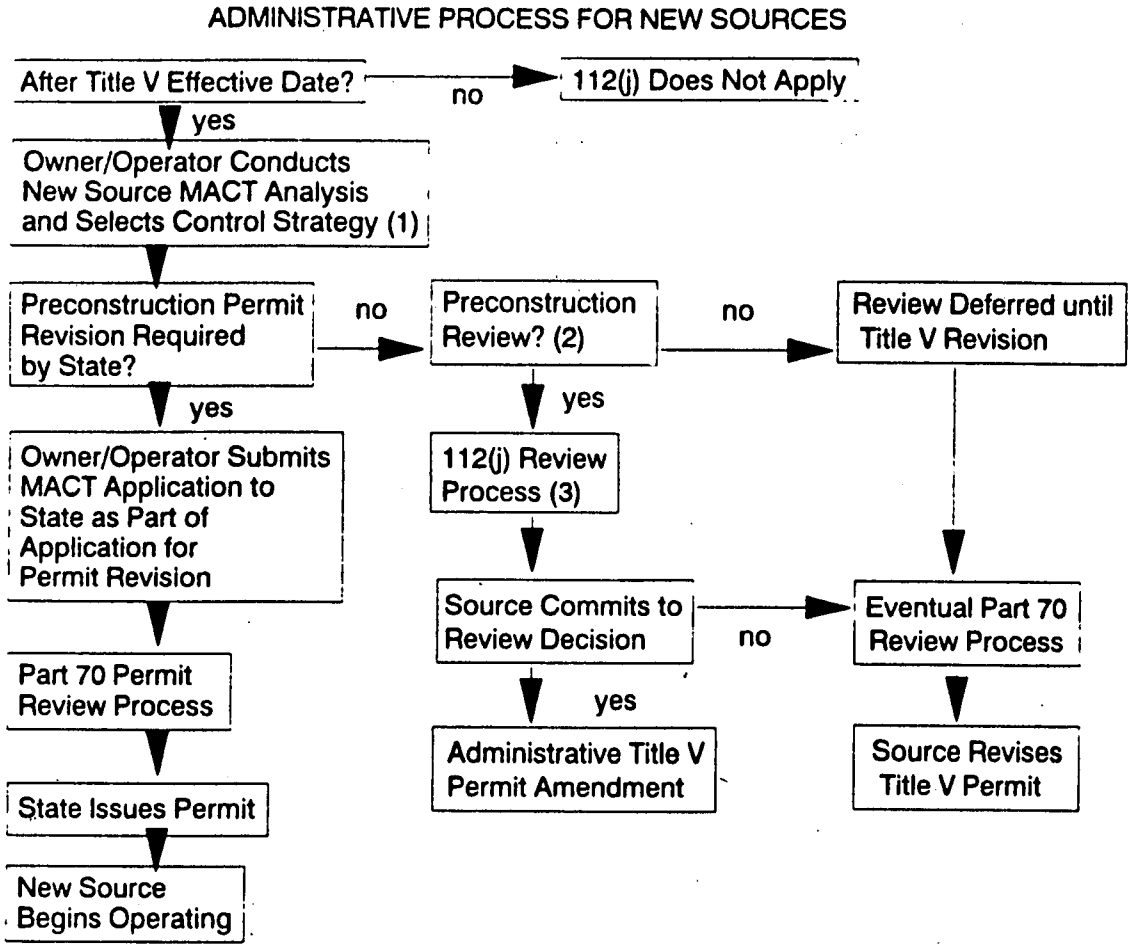

(1) Control Strategy Must Be Adopted Irrespective of Review Status

(2) Preconstruction Review May be Required under 112(g) for Some Sources or May Occur at the Applicant's Request

(3) 112(j) Review Process Detailed in Figure 2a

Figure 2

112(J) REVIEW PROCESS FOR NEW SOURCES

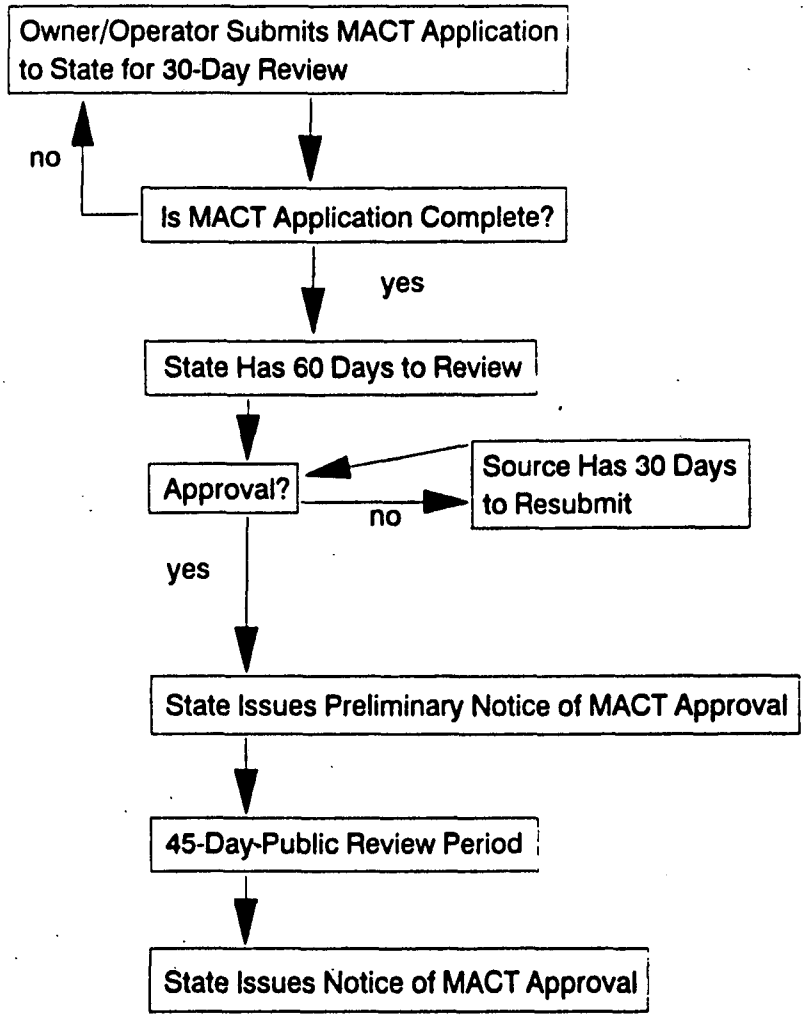

Figure 2a

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The EPA believes that there are substantial implementation advantages to preconstruction review for sources subject to 112(j). Preconstruction review provides sources with the benefit of the State's control determination prior to construction. This minimizes the possibility that initial control technology installed by a source in anticipation of a 112(j) new source MACT determination will need to be replaced in order to comply with the eventual requirements of 112(j) as well as the subsequent 112(d) MACT determination. The EPA's past experience in enforcing air quality regulations suggests strongly that it would be very difficult to require substantial changes in the design of equipment once it is in place. Therefore the EPA strongly urges States to establish a preconstruction review process for sources subject to the requirements of 112(j). The EPA today requests comment on the implementation consequences for 112(j) and 112(d) when preconstruction review is not required.

Another benefit of preconstruction review is that a State can also require compliance earlier than permit issuance. If, under State law (through section 112(l) delegation), a State wishes to enforce case-by-case MACT at startup for new sources, then preconstruction review is the avenue for enforcement of such a requirement. The EPA today specifically requests comment on the likely consequences of the lack of such an enforcement mechanism at the federal level.

The EPA is, however, sensitive to the concern that preconstruction review should not lead to unreasonable delays. For sources not covered by 112(g) preconstruction requirements, § 63.54 contains streamlined administrative procedures which should ensure that the preconstruction review is done quickly.

The process outlined in § 63.54 begins with a 30-day completeness determination. Once a complete application is received, approval or an intent to disapprove the application is required. If an intent to disapprove is issued, the owner or operator is given the opportunity to provide further information.

Section 63.54(b) establishes an administrative process for reviewing a request by an owner or operator for a MACT determination. If the determination is to be federally enforceable, the proposed decision to either approve or disapprove the application is then subject to public review. Today's proposed rule would provide for public review through issuance of a notice containing all the relevant background information about the application and 45 days for the public to comment on whether the application should or should not be granted. In order to expedite approval of noncontroversial case-by-case MACT determinations the proposed rule would allow such determinations to be made final following the close of the comment period if no adverse comments have been received. If adverse comments are received a final notice must be published either approving or disapproving the application and addressing the comments.

Today's proposal requiring public review prior to approval of case-by-case MACT determinations is consistent with current EPA practice in other Clean Air Act programs where federal enforceability is required. For example, 40 CFR 51.161 requires a 30 day public comment period for review of an agency's proposed approval or disapproval of a minor new source permit. Similarly, in a 1989 rulemaking EPA enumerated five criteria that must be met before a State-issued operating permit can become federally enforceable. One of those criteria is that the permit must be subject to public review before issuance. This criterion was described in the notice as being consistent with the EPA's current practice for construction permits codified at 40 CFR 51.161. (See 54 FR 27283, June 28, 1989).

Thus, the Agency's current practice is to require public review of decisions required to be federally enforceable. As stated by the Supreme Court in *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Automobile Insurance Co. et al,* 463 U.S. 27, 43 (1983), "an agency changing its course * * * is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." In this case there is an established practice of requiring public review as a prerequisite to federal enforceability. EPA proposes to follow that practice in this case unless a more compelling reason is identified for either changing that practice or deviating from it in this specific case.

As discussed above, the EPA is proposing to require public review as a prerequisite to federal enforceability of case-by-case MACT determinations. Comment is specifically requested concerning whether public review should be a prerequisite to federal enforceability of case-by-case MACT determinations, and if it should not, what justification there would be for deviating from established practice.

In § 63.51 of the regulation, EPA has established a definition for federally enforceable for application to section 112(j) MACT determinations. This definition is based on the five criteria for federal enforceability established in 40 CFR parts 51 and 52 (54 FR 27274). Part of the criteria for conferring federal enforceability to a State or locally established emission limitation requires the emission limitation to undergo some public scrutiny and be kept in standardized files in EPA's Regional Offices. In addition, the emission limitation must be enforceable as a legal and practical matter.

In *United States* v. *Louisiana-Pacific Corporation* (682 F. Supp. 1122 (D. Colo. Oct. 30, 1987) and 682 Supp. 1141 (d. Colo. March 22, 1988),) the court ruled that permit conditions that contained blanket emission limits (i.e. tons/yr) were not enforceable as a practicable matter because such restrictions "* * * would be virtually impossible to verify or enforce." In order to be federally enforceable, operational or production limitations including limitations on quantities of raw material consumed, fuel combusted, hours of operation, or conditions which specify that the source must install and maintain controls that reduce emission to a specified emission rate or level, must be imposed on the source in addition to a blanket emission limitation. These operation and production limitations should be based on the shortest practicable time period, generally not to exceed one month. EPA has taken the position that requirements for a monthly limit prevents the enforcing agency from having to wait for long periods of time to establish a continuing violation before initiating enforcement action.

To ensure federal enforceability, the owner or operator must at a minimum be subject to monitoring, recordkeeping and reporting requirements sufficient to document the source's compliance with proper maintenance and operational requirements. Because major sources obtaining MACT determinations will incorporate such determinations into a title V permit, the regulations that are the subject of this preamble have included a requirement that the monitoring, recordkeeping, and reporting requirements required for a case-by-case MACT determination be consistent with the compliance requirements contained in part 70. Part 70 requires monitoring, recordkeeping and reporting sufficient to demonstrate compliance with the emission standard—as well as compliance with maintenance and operational requirements.

EPA believes that consideration of the part 70 compliance requirements within the MACT determination process will be much more efficient for both the source and the reviewing agency. If the public review process for the MACT determination is substantially equivalent to that which will be required for a title V permit (under part 70 or part 71), the source would not need to undergo another public review of the compliance requirements to assure that the requirements are sufficient for the purposes of issuing the title V permit. In addition, consideration of these requirements will prevent a source from having to retrofit monitoring equipment in order to obtain a title V permit. States may also enhance the preconstruction process by the addition of a formal 45-day review period and notice to affected States, consistent with 40 CFR 70.8.

In addition to part 70 compliance requirements, additional requirements may need to be considered at the time of the MACT determination. Section 114 of the Act directs EPA to require enhanced monitoring and compliance certifications for all major sources. For the same reasons stated for considering the part 70 compliance requirements, the EPA believes that these section 114 enhanced monitoring and compliance principles should also be considered at the time of the MACT determination, and enforced at start-up.

The end result of the administrative review process for new sources is a determination set forth in a document that is termed a "Notice of MACT Approval." Requirements for this Notice are provided in paragraph 63.54(c) of the proposed rule. This Notice is required to contain the emission limitations, notification, operating and maintenance, performance testing, reporting, recordkeeping, compliance dates, and any other requirements needed to ensure that the case-by-case MACT emission limitation will be met.

The Notice of MACT Approval serves to provide the obvious mechanism for federal enforceability of these conditions in the interval between initial operation of the new source and the time the conditions are added to the part 70 or part 71 permit.

The EPA recognizes that there are cases for which sources would prefer to minimize delays in the process, particularly for operations which change relatively frequently, and where the owner or operator is willing to control emissions from those changes with technologies that could be recognized as best available controls. The EPA requests comment on further procedures to achieve this goal.

The EPA is especially interested in exploring suggestions that the general permit procedures, outlined in 40 CFR 70.6(d), be available for such situations. The general permit may have application for section 112(j) determinations where the permitting authority is able to make a presumptive determination of MACT for a given type of source. The general permit would have to set forth the controls required by part 70. Once the general permit is issued, application of the MACT determination at a particular source would involve merely a determination that the source falls within the source category covered by the general permit.

As discussed in the preamble to the operating permit regulation, general permits may be issued to cover discrete emissions units at permitted facilities. 57 FR, at 32279. While a general permit cannot be used to modify the terms of an existing title V permit, it may be issued to cover a change at an existing plant, such as addition of a new MACT-emitting unit, that would otherwise be eligible to apply for a new individual permit. In that case, the requirements of the general permit could be incorporated into the permit for the facility at renewal.

The EPA solicits comment on the approach to preconstruction review described above. EPA specifically solicits comment on whether 112(j) can be interpreted to require mandatory preconstruction review for all new sources.

F. Section 63.55: Incorporation of Requirements for New Sources Into the Operating Permit

Section 63.55 describes the relationship of the MACT review process for new sources to the operating program requirements pursuant to title V of the Act amendments. The requirements for title V permits, contained in 40 CFR part 70, were published on July 21, 1992 (57 FR 32250). For existing sources, the approach to establishing an administrative process for determinations under section 112(j) of the Act is to rely on the title V review process as the mechanism for establishing MACT requirements. For new sources, however, the EPA believes that reliance on the title V permit process may not be sufficient. First, the title V requirements clearly do not require a new "greenfield" plant to apply for an operating permit until 1 year after the plant begins operation. Because the title V permit must be issued within 18 months of the application, it could be up to 30 months after commencement of operation before section 112(j) requirements would be incorporated into the permit. Second, the title V requirements do not ensure that a MACT determination will be conducted before construction. While in some cases States with title V programs may require preconstruction reviews as part of the operating permit process, this will not always be the case.

Therefore, while for existing sources the title V permit process is sufficiently comprehensive to handle section 112(j) reviews, the EPA believes, based upon the above considerations, that when the title V process does not occur until after construction has begun, new sources should be subject to preconstruction review. All new major sources and new sources constructed as part of a modification of an existing major source will likely be subject to preconstruction review under section 112(g), and the proposed rule provides a mechanism, optional with the State, for providing a preconstruction review process yielding a federally enforceable determination of MACT.

Regardless of the timing for incorporation of 112(j) new source determinations into the operating permit, there are certain requirements that apply. The title V permit must be revised or issued according to procedures set forth in §§ 70.7 and 70.8. In addition, the permit must incorporate compliance provisions of § 70.6. If, during the EPA's review of the section 112(j) determination, it becomes apparent that the determination is not in compliance with the Act, then EPA must object to the issuance or revision of that permit.

These requirements are obviously satisfied either when part 70 requires revision to an existing title V permit prior to construction, or when the permitting authority otherwise requires incorporation of conditions into a title V permit as a step in the section 112(j) new source case-by-case MACT determination process. However, even where there is no formal incorporation of conditions into a title V permit prior to operation, subsequent additional title V review may effectively be avoided if the State's section 112(g) or optional 112(j) process is "enhanced" to include the important title V procedures, thereby allowing for later incorporation into the title V permit by administrative amendment.

Section 70.7(d) of the operating permits rule defines an "administrative amendment" to include a revision that "[i]ncorporates into the part 70 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural

requirements substantially equivalent to those contained in §§ 70.7 and 70.8 of this Part * * * and compliance requirements substantially equivalent to those contained in § 70.6 of this part." This process of "enhancement" of preconstruction procedures was discussed in the preamble to the operating permits rule in the context of existing State new source review programs (see 57 FR, at 32289), but was not discussed in relation to section 112(j) because the procedures associated with section 112(j) determinations had not then been articulated. However, the language of § 70.7(d)(v) would allow for use of administrative amendments for an enhanced preconstruction review process, and the EPA believes such use is clearly within the intent of that provision.

Enhancement of the preconstruction review process may be partial only, incorporating some elements of the required part 70 review or compliance provisions in the preconstruction review process itself, with the remaining elements occurring during the title V process. For instance public review of the MACT determination that meets the requirements of § 70.7(h) need not be repeated at the time of incorporation into the title V permit. However, for the administrative amendment procedures to be available for determinations that have been through an enhanced process, the public, EPA and affected States must have had the opportunity to review all aspects of the MACT determination, including any compliance provisions required under § 70.6. Thus, public review during the preconstruction review process would not suffice for purposes of title V if the process did not specify the application of compliance provisions substantially equivalent to those in § 70.6, including monitoring, reporting, recordkeeping, and compliance certification.

G. Section 63.56. MACT Determinations

As discussed previously, §§ 63.52 and 63.54 require MACT determinations, after the effective date of a title V permit program in a State, for all HAP-emitting equipment that is located at a major source and is in a source category for which the Agency has failed to promulgate a maximum achievable control technology (MACT) standard under sections 112(d) or 112(h) of the Clean Air Act within 18 months after the date listed in the source category schedule for standards. This section of the preamble discusses the EPA's proposed procedures for making these MACT determinations. These procedures include technical review procedures needed to establish a MACT emission limitation and a corresponding MACT control technology. In the proposed rule, the overall process for MACT determinations is outlined in § 63.56. In addition to the proposed rule, EPA is making available today a draft document entitled Draft Guidelines for MACT Determinations under 112(j) (EPA–450/3–92–007). This document will contain more details on both technical and administrative procedures.

The primary emphasis in the MACT guidelines is on the procedures for case-by-case MACT determinations when no applicable MACT standard has been proposed by the EPA. The procedures for determinations after MACT standards have been proposed are more straightforward.

Section 63.56 reviews a number of general principles that would govern MACT determinations under the proposed rule. In general, the purpose of a case-by-case MACT determination is to develop technology-based limitations for HAP emissions that the Administrator (or a permitting agency to whom authority has been delegated) approves as equivalent to the emission limitations required for the source category if promulgated MACT standards were in effect under section 112(d) or section 112(h) of the Act.

The EPA believes that if a MACT standard has been proposed, but not yet promulgated, this proposed standard is the best estimator of the Agency's final action, and therefore should be considered in establishing a case-by-case MACT emission limitation, and followed unless the State can adequately support an alternative. Accordingly, paragraph 63.56(a)(1) requires that in the absence of a supportable alternative, the selected control technology should be consistent with any such proposed standard. Of course, where improved information has become available since MACT proposal, such information should be considered.

When no MACT standard has been proposed, the proposed rule requires, for a determination by the reviewing agency, that the technology selected by the owner or operator is consistent with the overall requirements described in section 112(d) of the Act.

Section 112(d)(3) of the Act describes the general considerations for a MACT determination. A MACT level of control is "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new and existing sources in the category or subcategory * * *." This paragraph of the Act continues to describe a number of items that might be considered in designing MACT standards such as material substitutions, enclosure of processes, capture and control of emissions, design and work practice standards, and operational standards. In the proposed rule, this list of items is included in the definition of "control technology" in § 63.51 of the proposed rule.

Section 112(d) also imposes certain minimum requirements on the determination of "maximum achievable control technology." Collectively, these minimum requirements are defined in the proposed rule as the "MACT floor."

For new sources, the MACT floor for a case-by-case MACT determination, consistent with section 112(d), is the level of control that is achieved in practice by the best controlled similar source. The EPA believes that the legislative history of section 112 suggests that the "best controlled similar source" could be located outside of the United States. The definition of MACT floor for new source MACT is therefore not restricted to sources in the United States, but could instead be based on a technology known to be used in practice on a similar source located anywhere.

For existing sources, the MACT floor for the case-by-case determination, consistent with section 112(d) of the Act, is an emission limitation equal to the average emission limitation achieved by the best performing 12 percent of existing sources in the category for categories or subcategories with 30 or more sources, or the average emission limitation achieved by the best 5 sources for categories with fewer than 30 sources. The MACT floor for existing sources also takes into account sources achieving the "lowest achievable emission rate" as defined for the criteria pollutant new source review program under section 171 of the Act, and excludes them from the floor calculation. The EPA interprets the "best performing 12 percent" to mean the best performing 12 percent of sources in the United States, because all sources in each category are in the United States. The phrase "in the United States" is added to the existing source MACT floor definition in order to clarify that territories and possessions of the United States are included.

The EPA believes that when information is available to define a MACT floor, the case-by-case MACT determination must take that information into account. The EPA

currently maintains a number of databases that can be used as a resource for information on available control technologies, or to obtain data to calculate the MACT floor. These databases include the National Air Toxics Information Clearinghouse (NATICH), the Best Available Control Technology/Lowest Achievable Emission Rate (BACT/LAER) Clearinghouse, and the Aerometric Information Retrieval System (AIRS)/ AIRS Facility Subsystem (AFS).

The EPA requests comment on the general principle that a "sufficient effort" be made to determine the MACT floor.

The EPA believes that in most cases where 112(j) requirements are triggered, the EPA will have collected a substantial amount of information on the source category. When it appears that the 112(j) requirements will take effect, the EPA intends to make available any such information it has collected. For example, the data collection may be readily available in EPA-proposed Background Information Document (BID) for which a MACT floor has been determined. The EPA believes that for such cases it would be reasonable to expect that such a BID would be taken into consideration in establishing a case-by-case MACT emission limitation.

In other cases, the EPA may have collected a great deal of information on the industry but a BID will not be available at the time of the 112(j) trigger date. The EPA anticipates sharing its information with interested parties. The EPA believes that it is reasonable to expect that a dialogue can be established with affected industries and States to review this information for purposes of establishing a case-by-case MACT emission limitation.

In other cases, the EPA may have collected only qualitative information on the types of control measures in existence for a source category. Such information would often be a good starting point for evaluating control options; in addition, such qualitative information may sometimes indicate which measures have been taken by the best performing 12% of the industry.

The EPA expects that, in rare cases, if any, the Agency will have collected little or no information about a source category that would be useful for the purposes of implementing section 112(j).

When a MACT floor can be determined, the proposed rule requires that the control technology selected by the owner or operator achieve an equal or greater level of control than that MACT floor. The owner or operator should consider, in determining whether to request approval of a control technology achieving a level of control greater than the floor, the cost, non-air quality health and environmental impacts and energy requirements of achieving that level of control. (See section 112(d)(2) of the Act)

When a MACT floor cannot be determined, the proposed rule requires a maximum degree of reduction in emissions with consideration to the cost, non-air quality health and environmental impacts and energy requirements. The MACT Guidelines discuss methods for establishing a case-by-case MACT emission limitation under these circumstances. These methods are patterned after similar guidelines for best available control technology (BACT) determinations under criteria pollutant permitting programs.

A significant issue for this rulemaking is how to avoid placing unmanageable information-gathering burdens on sources and permitting authorities—while still ensuring that emissions limitations under 112(j) are equivalent in stringency to MACT standards that the EPA would have issued. The EPA specifically requests comment on how to better define the "available information" that, at a minimum, an owner or operator must use to document a MACT floor finding and to select a MACT candidate. EPA also requests comment on the definition of "available information" that, at a minimum, a permitting authority must consider in determining emission limitations for new and existing sources under this rule.

Section 63.56(c) establishes the requirement that the permitting authority submit summary information pertinent to the MACT application to an EPA-established national database. The EPA requests comment today on whether approval or disapproval of a MACT application can be tied to submission of such data to the national database.

H. Section 63.57: Requirements After Promulgation of a Subsequent Standard Under 112(d)

Section 63.57 of the proposed rule sets out requirements for incorporating subsequent standards into an operating permit after the owner or operator has submitted a permit application for a 112(j) case-by-case MACT determination, or after a case-by-case MACT determination has been made under section 112(j). Section 63.57 implements the specific requirements of subsection 112(j)(6) of the Act.

Section 63.57 provides, as required in the Act, that if the EPA promulgates a 112(d) standard for a source category before approval of a 112(j) permit application for a source in that source category, then the permit must reflect the 112(d) standard. New sources must comply upon startup with the 112(d) rule except that, if the MACT standard is more stringent than the proposal, source commencing construction or reconstruction between proposal and promulgation may comply with the proposal for 3 years, then meet the final MACT standard.

If EPA promulgates a 112(d) standard after issuance of a 112(j) permit for a source in the relevant source category, then the permit must be revised upon renewal to reflect the 112(d) standard. However, the compliance period must be no longer than a total of eight years from the initial 112(j) compliance date, or the 112(d) promulgation date, whichever is earlier.

Paragraph 63.57(c) clarifies a State's responsibilities when a case-by-case MACT standard is more stringent than a subsequent 112(d) standard, and a permit containing that case-by-case standard has been issued. In that instance, the State is not required to revise the permit to reflect the less stringent 112(d) standard, but may presume that the more stringent case-by-case determination satisfies the requirements of both 112(j) and 112(d). The EPA believes that nothing in section 112 of the Clean Air Act requires pre-emption of these more stringent State standards.

IV. Discussion of the Relationship of the Proposed Requirements to Other Requirements of the Act

A. 112j, 112g and 112d: Overlapping Requirements

States and sources implementing the requirements of section 112 of the Clean Air Act need to understand the potentially complex relationships among several interlocking provisions. The EPA is currently contemplating different interpretations of the relationship among the requirements of section 112 (d), (g) and (j).

Internal Consistency

As discussed in section II.C. of this preamble, EPA's primary goal is to create as seamless a web as possible between case-by-case MACT determinations under 112(j) and implementation of subsequent 112(d) standards for those same source categories. In addition, the Agency desires to rationalize the 112(j) provisions with the 112(g) provisions

requiring case-by-case MACT determinations for constructed, reconstructed, and modified major sources. While under the Act some of the specific substantive requirements of section 112(g) differ under the Act from the substantive requirements of 112(j) and 112(d), the EPA intends to ensure the greatest possible operational consistency among section 112 (d), (g), and (j) provisions.

One fundamental principle guiding the design of all three programs is that substantive control requirements under 112(g) hold only until the requirements of a 112(j) or 112(d) standard become effective. In other words, after the effective date of a 112(j) case-by-case MACT determination or a 112(d) MACT standard, the control requirements of section 112(j) or section 112(d) supersede the control requirements of section 112(g).

The EPA considered an alternative approach, i.e. the finding that 112(g) governs all changes and additions of new emission units at existing sources whether or not a 112(d) or (j) standard exists. The EPA rejected this approach for reasons enumerated below. Nevertheless the EPA requests comment on both approaches.

One reason for rejecting the approach that 112(g) control extends to sources covered by 112(d) or 112(j) standards is that it leads to the conclusion that many new sources within the section 112(a)(4) definition of new source would forever escape having to apply a new source MACT level of control. Such an interpretation is in conflict with the requirements of section 112(d).

Section 112(a)(4) defines a new source as "a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source." Thus, once a standard has been set under section 112(d), any new source will be subject to new source MACT. Moreover, under section 112(a), a "stationary source" can be "major" (112(a)(1)) or "area" (112(a)(2)). The MACT standard will define the portion of a facility that is considered a "source" for the purposes of the particular standard.

Section 112(g) applies to construction, reconstruction, or modification of major sources, and in many cases will have an effect on sources earlier than section 112(d) or (j) standards. However, section 112(g) only requires new source MACT on new major sources, and considers any other new emission unit to be a modification of an existing major source. As a "modification," such a new emission unit will be required to apply for existing source case-by-case MACT determination under 112(g). Therefore if 112(g) were to constrain the application of a subsequent 112(j) or 112(d) standard, many new emission units under the 112(a)(4) definition of "new source" would never be required to comply with new source MACT.

In addition, under 112(g) a new emission unit might not even be required to meet an existing source MACT level of control. Section 112(g) allows for modifications to either: (1) Comply with a case-by-case "existing source" MACT determination under 112(g); (2) offset emissions increases in lieu of applying 112(g) existing source MACT requirements; or (3) if its emissions were below 112(g) de minimis levels, not be subject to any control requirements at all. The EPA believes that 112(g) thus provides major sources with a great deal of needed flexibility before 112(d) or (j) standards are set; but that once those standards are in place the Act intends that these sources must comply with the specific requirements of those standards.

Finally, the interpretation that 112(g) governs the addition of new equipment at major sources to which 112(d) or (j) standards already apply has some anomalous implications. One example would be a new emission unit whose emissions are below 112(g) de minimis levels for a particular hazardous air pollutant. If that emission unit were added to a major source, it would be exempt from the requirements of 112(g), but would be required to apply new source MACT control under 112(j). However, if that emission unit were not below 112(g) de minimis levels, it would be required to comply with 112(g). If 112(g) requirements limit the application of 112(j), then the source would be required to apply existing source MACT. In this instance, a smaller emission unit would be required to control more stringently than a larger emission unit.

Another example of anomalies resulting from this reading of the statute would be a 112(d) standard that sets new source MACT for new area sources in a source category. Under this reading, major sources adding new sources could avoid new source MACT, but any new area source would have to meet new source MACT. Again, a smaller unit would be required to control more stringently than a larger emission unit.

Therefore EPA believes that the substantive control requirements of 112(g) are pre-empted by the requirements of a relevant 112(j) or 112(d) standard.

Administrative Consistency

Voluntary administrative procedures for new sources under 112(j), as outlined in § 63.53 of the proposed rule, are intended to be analogous to administrative requirements to be set out for modified, constructed, and reconstructed sources under section 112(g) of the CAA, which will be proposed in §§ 63.40 through 63.48 of this subpart.

Figure 3 illustrates the link between the voluntary section 112(j) preconstruction review process and section 112(g) administrative requirements. Although the EPA believes that section 112(j) does not provide authority for preconstruction review of all new sources, the EPA strongly believes, as a matter of policy, that the administrative process for new major sources or existing sources adding new equipment should be the same regardless of whether the 112(j) effective date has passed.

Before the 112(j) effective date, such sources will be required to make a case-by-case MACT determination under 112(g). After the 112(j) effective date, these sources will be required to make a case-by-case MACT determination under 112(j). In cases where 112(g) and 112(j) substantive control requirements differ, the more stringent 112(j) controls will in effect apply. However, these sources will only be subject to preconstruction review under 112(g). Sources applying for preconstruction approval under 112(g), but who will be subject to 112(j) new source MACT, need to know this before they construct, in order to install the right equipment.

In addition there will be sources, such as some new emission units added to an existing major source, that may not be covered by 112(g), but who will be required to install new source MACT under 112(j). For example, an owner/operator may intend to make an offset showing that would avoid a case-by-case MACT determination under 112(g). Or a new unit's emissions may fall below a 112(g) de minimis level for a specific pollutant. In both of these cases, the owner/operator will need to know in advance of a missed promulgation date that they will be required to install new source MACT under 112(j). Without a preconstruction review process, there is no way to ensure that new sources not covered by 112(g) will know whether they are complying with 112(j) requirements until up to one year after they have already commenced construction.

Therefore, anyone planning to construct a new major source, or any existing major source planning to install

a new emission unit after a scheduled promulgation date for a source category, is strongly encouraged to undergo preconstruction review under 112(j), in order to provide some certainty as to required new source controls prior to construction.

The EPA specifically requests comment on the desired relationships between the 112(g) and 112(j) administrative processes in regard to preconstruction review, and on the policy implications of a voluntary preconstruction review process.

B. Section 112(l) Delegation Process

Under section 112(l) of the Act, States have the option of developing and submitting to the Administrator a program for implementing the requirements of section 112, including section 112(j). The EPA proposed rules for the implementation of section 112(l) on May 19, 1993 (58 FR 29296). This rule proposed to add §§ 63.90 through 63.96 to 40 CFR part 63.

The EPA proposes that the delegation process provided under section 112(l) be used to smooth the transition to State implementation of section 112(j) in a way that minimizes disruption of existing State and local toxic air pollutant permit programs. The EPA proposes that the section 112(l) process be used for States wishing to preserve existing requirements, or add new requirements, in combination with the requirements and suggested actions of this proposed rule, into an overall program that meets the requirements of the Act.

C. Section 112(i)(5) Early Reductions Program

Section 112(i)(5) of the Act allows EPA to grant a source a six year compliance extension from a section 112(d) MACT standard if the source achieves "early reductions" of its emissions. An early reduction is defined as a 90% reduction in a source's hazardous air pollutant emissions (95% reduction in a source's particulate emissions) before the applicable MACT standard is proposed. The source's commitment to achieve early reductions is federally enforceable, must be included in the title V permit, and must be submitted to EPA before the relevant 112(d) standard for that source category is proposed. (Sources subject to MACT standards scheduled for promulgation in November 1992 must submit an enforceable commitment to 90% reductions to EPA by December 1, 1993. By December 1, 1994, the source must achieve the federally enforceable emission reduction). These commitments to reduce emissions early become classified as alternative emission limitations throughout the six year extension period. Alternative emission limitations are the "applicable emission requirements" for the early reduction source.

Paragraph 63.52(e) provides that an alternative emission limitation established for the purpose of early reduction credit can be included as a case-by-case MACT limit in the permit, so long as the reduction was achieved by the date established in the source category schedule for standards. This requirement is established pursuant to the specific provisions of 112(j)(5).

V. Administrative Requirements

A. Executive Order 12291

An impact analysis was prepared for the proposed regulation. The impact analysis was prepared even though the proposed regulation is not expected to meet the "major rule" requirement as defined in Executive Order 12291. The regulation is not expected to have an annual effect on the economy of $100 million or more; it is not expected to cause significant adverse effects on competition. The objective of the impact analysis is to evaluate, to the extent possible, the costs and benefits associated with the proposed regulation.

The impacts (cost and emission reduction) of the section 112(j) program are assumed to begin in either 1994 or 1996 and increase as additional source categories are subject to the program.

The absence of valuation and sufficient exposure-response information precludes a full quantitative benefits analysis. Therefore, EPA evaluated the minimum benefits that would justify general program directions.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities.

This regulation does not affect a significant number of small businesses, small governmental jurisdictions, or small institutions. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities.

C. Paperwork Reduction Act

The information collection requirements in this proposal have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1648.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or by calling (202) 260–2740.

This collection of information is estimated to have an average annual public reporting burden of approximately 200 hours per respondent. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 30, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I, of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding a new subpart B, consisting of §§ 63.40–63.57 to read as follows:

Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(g) and 112(j)

Sec.

Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act sections 112(g) and 112(j)

§§ 63.40–63.49 [Reserved]

§ 63.50 Applicability.

(a) *General applicability.*[1] The requirements of §§ 63.50 through 63.57 implement section 112(j) of the Clean Air Act (as amended in 1990). The requirements of §§ 63.50 through 63.57 apply in each State beginning on the effective date of an approved title V permit program in such State, but not before May 15, 1994. These requirements apply to the owner or operator of a major source of hazardous air pollutants which includes one or more stationary sources included in a source category or subcategory for which the Administrator has failed to promulgate an emission standard under this part by the section 112(j) deadline.

(b) *Relationship to State and local requirements.* Nothing in §§ 63.50 through 63.57 shall prevent a State or local regulatory agency from imposing more stringent requirements than those contained in these subsections.

(c) *Retention of State permit program approval.* In order to retain State permit program approval, a State must, by the section 112(j) deadline for a source category, obtain sufficient legal authority to make case-by-case MACT determinations, to incorporate those determinations into a 40 CFR part 70 permit, and to incorporate and enforce other requirements of section 112(j).

§ 63.51 Definitions.

Terms used in §§ 63.50 through 63.57 of this subpart that are not defined below have the meaning given to them in the Act, in subpart A[2] of this part, or in 40 CFR part 70.

Control technology means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including, but not limited to, measures which:

(1) Reduce the quantity, or eliminate emissions, of such pollutants through process changes, substitution of materials or other modifications;

(2) Enclose systems or processes to eliminate emissions;

(3) Collect, capture, and treat such pollutants when released from a process, stack, storage or fugitive emissions point;

(4) Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 USC 7412(h); or

(5) Are a combination of paragraphs (1) through (4) of this definition.

Emission point means any part or activity of a major source that emits or has the potential to emit any hazardous air pollutant.

Emission unit means the emission point or collection of emission points, within a major source, which the permitting authority determines is the appropriate entity for making a MACT determination under section 112(j). An emission unit can be defined (by the permitting authority) as any of the following:

(1) An emitting point that can be individually controlled, e.g. a boiler or a spray booth.

(2) The smallest grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.

(3) Any grouping of emission points, that, when collected together, can be commonly controlled by a single control device or work practice.

(4) A grouping of emission points that are functionally related. Equipment is functionally related if the operation or action for which the equipment was specifically designed could not occur without being connected with or without relying on the operation of another piece of equipment.

(5) A grouping of emission points that, when collected together, comprise a building, structure, facility, or installation.

Existing major source means a major source, construction or reconstruction of which is commenced before EPA proposed a standard under 112 (d) or (h), or if no proposal was published, then before the section 112(e) promulgation deadline.

Federally enforceable, when applied to emission limitations and conditions, means that they are enforceable by the Administrator, including those requirements established by State or Local agencies that have received approval to impose such limitations through an approved part 70 permit program or through section 112(l) of the Act. Requirements developed pursuant to part 60 and part 61 of this chapter and requirements within any applicable State Implementation Plan are also federally enforceable. To be federally enforceable, the limits and conditions must undergo public review and be reported to the EPA. Emission limits that are federally enforceable include limits on the allowable capacity of the equipment; requirements for the installation, operation and maintenance of pollution control technologies; limits on hours of operation; and restrictions on amounts of materials combusted, stored, or produced. Any federally enforceable limitations or conditions must be practically enforceable and ensure adequate testing, monitoring, and recordkeeping to demonstrate compliance with the limitations and conditions. Therefore, general limitations such as yearly limits (e.g. tons per year) are not sufficient for federal enforceability. The use of hourly, daily, weekly, or monthly rolling averages is acceptable.

Maximum achievable control technology (MACT) emission limitation for existing sources means the emission limitation reflecting the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and

[1] The requirements of §§ 63.50 through 63.57 implement section 112(j) of the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 101–549).

[2] EPA intends to propose subpart A of part 63.

any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies. This limitation shall not be less stringent than the MACT floor.

Maximum achievable control technology (MACT) emission limitation for new sources means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies.

Maximum Achievable Control Technology (MACT) floor means:

(1) For existing sources:

(i) The average emission limitation achieved by the best performing 12 percent of the existing sources in the United States (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171) applicable to the source category and prevailing at the time, in the category or subcategory, for categories and subcategories of stationary sources with 30 or more sources; or

(ii) The average emission limitation achieved by the best performing 5 sources in the United States (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory, for a category or subcategory of stationary sources with fewer than 30 sources;

(2) For new sources, the emission limitation achieved in practice by the best controlled similar source.

New major source means a major source for which construction or reconstruction is commenced after the section 112(e) promulgation deadline, or after proposal of a relevant standard under section 112(d) or 112(h) of the Clean Air Act (as amended in 1990), whichever comes first.

New source means an emission unit for which construction or reconstruction is commenced after the section 112(e) deadline, or after proposal of a relevant standard under section 112(d) of the Clean Air Act (as amended in 1990), whichever comes first.

Potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder.

Section 112(j) deadline means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under this part. The applicable date for categories of major sources is contained in subpart C of this part.

Similar source means an emission unit that serves a like function and/or is structurally similar in design and capacity to an emission unit.

United States means the United States, its possessions and territories.

§ 63.52 Requirements for existing sources.

(a) If the Administrator fails to promulgate an emission standard under this part on or before an applicable the section 112(e) deadline, the owner or operator of an existing major source that includes one or more stationary sources in such category or subcategory, that does not already have a permit requiring compliance with a limit that would meet the requirements of section 112(j) of the Act, shall submit an application for a 40 CFR part 70 or 40 CFR part 71 [3] permit or application for a significant permit modification, whichever is applicable, in accordance with the provisions of 40 CFR part 70 or 40 CFR part 71. The owner or operator of a major source that already has a 40 CFR part 70 or 40 CFR part 71 permit requiring compliance with a limit that would meet the requirements of section 112(j) of the Act, shall submit an application for an administrative permit amendment, in accordance with the provisions of 40 CFR part 70 or 40 CFR part 71.

(b) *Submittal of permit application.* The application for a 40 CFR part 70 or 40 CFR part 71 permit, significant permit modification, or administrative amendment by an owner or operator of an existing major source shall be submitted to the permitting authority not later than the section 112(j) deadline. The application shall contain the information required by § 63.53.

(c) *Permit review.* (1) Permit applications submitted under this paragraph will be reviewed and approved or disapproved according to the provisions of 40 CFR part 70 or 40 CFR part 71, whichever is applicable, and any other regulations approved under Title V in the State in which the source is located. In the event that the State disapproves a permit application submitted under this paragraph or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the State not later than 180 days after being notified that the application was disapproved or is incomplete.

(2) If the owner or operator has submitted a timely and complete application for a 40 CFR part 70 or 40 CFR part 71 permit or significant modification required by this paragraph, any failure to have this permit will not be a violation of the requirements of this paragraph, unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.

(d) The permit shall contain information consistent with the requirements of § 63.54(c).

(e) *Emission limitation.* The permit issued shall contain an equivalent emission limitation (or limitations) (as further defined in § 63.56(a)), for that category or subcategory determined on a case-by-case basis by the permitting authority, or, if the applicable criteria in Subpart D of this part are met, the permit may contain an alternative emission limitation. For the purposes of the preceding sentence, early reductions made pursuant to section 112(i)(5)(A) of the Act shall be achieved not later than the date on which the relevant standard should have been promulgated according to the date in Subpart C of this part.

(f) *Compliance date.* The owner or operator of an existing major source subject to the requirements of this paragraph shall comply with the emission limitation(s) established in the source's 40 CFR part 70 or 40 CFR part

[3] 40 CFR part 71 has not yet been promulgated. This citation assumes that 40 CFR part 71 will be issued final before this proposed rule is issued as a final rule.

71 permit. In no case will such compliance date exceed 3 years after the issuance of the permit for that source, except where the permitting authority issues a permit that grants an additional year to comply in accordance with section 112(i)(3)(B), and unless otherwise specified in § 63.55, or in subpart D of this part.

(g) *Enhanced monitoring.* In accordance with section 114(a)(3) of the Act, monitoring shall be capable of detecting deviations from each applicable emission limitation or other standard with sufficient reliability and timeliness to determine continuous compliance over the applicable reporting period. Such monitoring data may be used as a basis for enforcing emission limitations established under this subpart.

§ 63.53 Application content for case-by-case MACT determinations.

(a) An application for a MACT determination shall specify a MACT candidate selected by the owner or operator that, if properly operated and maintained, would achieve a MACT emission limitation.

(b) The application for a MACT determination shall contain the following information:

(1) The name and address (physical location) of the major source;

(2) A brief description of the major source, its source category or categories, a description of the emission unit(s) requiring a MACT determination pursuant to other requirements in this Subpart, and a description of whether the emission unit(s) require new source MACT or existing source MACT based on the definitions established in § 63.51;

(3) For a new source, the expected date of commencement of construction;

(4) For a new source, the expected date of completion of construction;

(5) For a new source, the anticipated date of startup of operation;

(6) The hazardous air pollutants emitted by each emission unit, and the emission rate for each hazardous air pollutant, stated in terms that would be considered federally enforceable as defined in § 63.51.

(7) Any existing federally enforceable emission limitations applicable to the source.

(8) The uncontrolled emissions for the source(s) in tons/yr or production unit in tons/yr (potential to emit in an uncontrolled state);

(9) Controlled emissions for the covered emission unit(s) in tons/yr or production unit in tons/yr (potential to emit in a controlled state);

(10) The MACT floor and supporting calculations for cases where the MACT floor must be computed on a case-by-case basis.

(11) Recommended emission limitations for the source(s), and supporting information, consistent with § 63.54(c).

(12) The selected MACT candidate to meet the emission limitation including technical information on the design, operation, size, estimated control efficiency, and any other information deemed appropriate by the permitting authority;

(13) Supporting documentation including identification of alternative control technologies considered to meet the emission limitation, and analysis of non-air quality health and environmental impacts or energy requirements for the selected MACT candidate;

(14) Parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the standard over the applicable reporting period.

(15) Any other information required pursuant to subpart A of this part.

§ 63.54 Preconstruction review procedures for new sources.

(a) *Review process for new sources.* (1) If the permitting authority requires an owner or operator to obtain or revise a 40 CFR part 70 permit before construction of the new source, or when the owner or operator chooses to obtain or revise a 40 CFR part 70 permit before construction, the owner or operator shall follow the administrative procedures established in part 70 of this chapter before construction of the new source.

(2) If an owner or operator is not required to obtain or revise a 40 CFR part 70 permit before construction of the new source (and has not elected to do so), but the new source is covered by the preconstruction review requirements of section 112(g), then the owner or operator shall comply with those requirements. If the new source is not covered by 112(g), the State, in its discretion, may provide a Notice of MACT Approval in accordance with the procedures set forth in paragraphs (b) through (h) of this section, before construction of the new source.

(3) Regardless of the preconstruction review process, the MACT determination shall be consistent with the principles established in § 63.56, and the Notice of MACT Approval or the permit, whichever is applicable, shall include the documentation required by § 63.53.

(b) *Optional administrative procedures for preconstruction review for new sources.* The permitting authority may provide for preconstruction review of section 112(j) MACT determinations upon approval by EPA of a program that is submitted pursuant to the requirements established under section 112(l) of the Act, and that provides for review procedures and compliance requirements no less stringent than those set forth in paragraphs (b) through (h) of this section.

(1) The permitting authority will notify the owner or operator in writing, within 30 days from the date the Notice of MACT Approval application is first received, as to whether the application for a MACT determination is complete or whether additional information is required.

(2) The permitting authority will approve an applicant's proposed MACT, or the permitting authority will notify the owner or operator in writing of its intention to disapprove a MACT candidate, within 60 calendar days after the receipt of a complete application. The 60-day period will begin on the calendar day that the owner or operator is notified in writing that the application is complete.

(3) The owner or operator may present, in writing, within 60 calendar days after notification of the permitting authority's intent to disapprove a MACT candidate, additional information, considerations, or amendments to the application before the permitting authority's issuance of a final disapproval.

(4) The permitting authority will approve or issue a final disapproval of the application no later than 30 days from the date additional information is received from the owner or operator.

(5) A final determination to disapprove any application will be in writing and will specify the grounds on which the disapproval is based.

(6) Approval of an applicant's proposed MACT will be set forth in the Notice of MACT Approval as described in paragraph (c) of this section.

(c) *Notice of MACT Approval.* (1) The Notice of MACT Approval will contain an emission standard or emission limitation to control the emissions of hazardous air pollutants. The MACT emission limitation will be determined by the permitting authority and will be based on the degree of emission reductions that can be achieved, if the control technologies or work practices are installed, maintained, and operated properly. Such emission limitation will be established consistent with the principles contained in § 63.56.

(2) The Notice of MACT Approval will specify any notification, operation and maintenance, performance testing,

monitoring, reporting and recordkeeping requirements. The Notice of MACT Approval shall include the following information:

(i) In addition to the MACT emission limitation required by paragraph (d)(1) of this section, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal enforceability of the MACT emission limitation;

(ii) Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with the requirements of 40 CFR 70.6(a) and 40 CFR 70.6(c).

(iii) In accordance with section 114(a)(3) of the Act, monitoring shall be capable of detecting deviations from each applicable emission limitation or other standard with sufficient reliability and timeliness to determine continuous compliance during the applicable reporting period. Such monitoring data may be used as a basis for enforcing emission limitations established under this Subpart.

(iv) A statement requiring the owner or operator to comply with all applicable requirements contained in subpart A of this part;

(v) A compliance date(s) by which the owner or operator shall be in compliance with the MACT emission limitation, and all other applicable terms and conditions of the notice.

(3) All provisions contained in the Notice of MACT approval are federally enforceable upon the effective date stated in such notice.

(d) *Opportunity for public comment on Notice of MACT Approval.* The permitting authority will provide opportunity for public comment on the draft Notice of MACT Approval prior to issuance, including, at a minimum,

(1) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the permitting authority's tentative determination;

(2) A 45-day period for submittal of public comment; and

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in paragraph (d)(1) of this section.

(e) *EPA notification.* The State or local agency, when authority for the MACT determination has been conferred to that State or local agency by the Administrator, shall send copies of the draft notice (in time for comment) and final notice required by paragraph (c) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in the region in which the new source would be located.

(f) *Effective date.* The effective date of a MACT determination for new sources under this paragraph shall be the date a Notice of MACT Approval is issued to the owner or operator of a new source.

(g) *Compliance date.* New sources shall comply with case-by-case MACT upon permit issuance.

(h) *Compliance with MACT determinations.* An owner or operator of a major source that is subject to a MACT determination shall comply with notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements contained in 40 CFR part 70.

§ 63.55 Incorporation of requirements for new sources into the operating permit.

(a) The owner or operator of a new source in a source category or subcategory subject to these subsections, that does not already have a permit requiring compliance with a limit meeting the requirements of section 112(j) of the Act (as in effect on the date of permit application) shall submit an application for a 40 CFR part 70 or 40 CFR part 71 permit or application for a significant permit modification, whichever is applicable, in accordance with the provisions of 40 CFR part 70 or 40 CFR part 71. The owner or operator of a source that already has a permit requiring compliance with a limit meeting the requirements of section 112(j) of the Act, shall submit an application for an administrative permit amendment, in accordance with the provisions of 40 CFR part 70 or 40 CFR part 71, and not later than the date 30 days after the date construction or reconstruction is commenced.

(b) *Permit review.* (1) Permit applications submitted under this paragraph will be reviewed and approved or disapproved according to the provisions of 40 CFR part 70 or 40 CFR part 71, whichever is applicable, and any regulations approved under title V in the State in which the source is located. In the event that the State disapproves a permit application submitted under this paragraph or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the State not later than 180 days after being notified that the application was disapproved or is incomplete.

(2) If the owner or operator has submitted a timely and complete application for a 40 CFR part 70 or 40 CFR part 71 permit or significant modification required by this paragraph, any failure to have a permit will not be a violation of the requirements of this paragraph, unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.

(c) The permit shall contain information consistent with the requirements of § 63.54(c).

(d) *Emission limitation.* The permit issued shall contain an equivalent emission limitation (or limitations) for that category or subcategory determined on a case-by-case basis by the permitting authority, or, if the applicable criteria in subpart D of this part are met, the permit may contain an alternative emission limitation. For the purposes of the preceding sentence, the early reduction required by section 112(i)(5)(A) of the Act shall be achieved not later than the date on which the relevant section 112(d) standard should have been promulgated according to the date in subpart C of this part.

(e) *Compliance date.* The owner or operator of a new source subject to the requirements of this paragraph shall comply with the emission limitation(s) established in the source's 40 CFR part 70 or 40 CFR part 71 permit immediately upon permit issuance.

§ 63.56 Maximum achievable control technology (MACT) determinations for sources subject to case-by-case determination of equivalent emission limitations.

(a) *Requirements for sources subject to case-by-case determination of equivalent emission limitations.* The owner or operator of a major source subject to this subpart shall submit a permit application or application for a MACT determination, whichever is applicable, containing emission limitations at least as stringent as those that would have applied had the relevant emission standard been promulgated according to the schedule established in subpart C of this part for the source category or subcategory of which the source is a member.

(1) When a relevant emission standard has been proposed pursuant to section 112(d) or section 112(h) of the Act, then the control technology selected by the owner or operator for the MACT candidate shall be capable of achieving all emission limitations and requirements of the proposed standard, unless the application contains information adequately supporting an alternative.

(2) When the Administrator has not proposed a relevant emission standard

pursuant to section 112 (d) or (h), but the Administrator (or the State) has adopted guidance or collected and distributed information establishing a MACT floor for a source category or subcategory for which an emission standard has not been promulgated according to the schedule established in subpart C of this part, then the emission limitations established in the 40 CFR part 70 or 40 CFR part 71 permit application of a major source in such source category or subcategory must be at least as stringent as those established in said guidance or distributed information, unless the application contains information adequately supporting an alternative.

(3) If a relevant emission standard has not yet been proposed pursuant to section 112(d) or section 112(h) of the Act, then the owner or operator shall document a MACT floor finding based on all available information, unless the selected MACT candidate achieves the best achievable level of control, and:

(i) If the MACT floor can be determined, then the control technology selected by the owner or operator for the MACT candidate shall obtain the maximum reduction in emissions of hazardous air pollutants that is achievable considering costs, non-air quality health and environmental impacts, and energy requirements, and shall achieve an emissions limitation at least as stringent as the MACT floor.

(ii) If the MACT floor cannot be determined, then the owner or operator shall select a control technology that will achieve a maximum reduction in emissions of hazardous air pollutants considering costs, non-air quality health and environmental impacts, and energy requirements;

(iii) The owner or operator shall select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the Administrator determines that a hazardous air pollutant (HAP) or HAPs cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(b) *Requirements for permitting authorities.* (1) After receiving a permit application or an application for a MACT determination, whichever is applicable, the permitting authority will review the application and other information available to the permitting authority and shall establish hazardous air pollutant emissions limitations at least equivalent in stringency to the limitation that would apply to such emission unit if an emission standard had been issued in a timely manner under subsection 112(d) of the Act.

(2) The permitting authority will establish these emissions limitations consistent with the following requirements and principles (which are further clarified in the "Draft Guidelines for MACT Determinations" [4]):

(i) For each major source subject to section 112(j), equivalent emissions limitations will be established for all emission units within a source category or subcategory for which the section 112(j) deadline has passed.

(ii) An equivalent emission limitation for an existing source will reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emission, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory for which the section 112(j) deadline has passed. This limitation will not be less stringent than the MACT floor, and will be based on available information.

(iii) An equivalent emissions limitation for a new source will not be less stringent than the emission limitation achieved in practice by the best controlled similar source, and must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which such emission standard applies. The limitation shall be based on available information.

(iv) Nothing in subpart B of this part will prevent a state or local permitting authority from establishing an emission limitation more stringent than required by federal regulations.

(c) *Reporting to National Data Base.* Within 60 days of the issuance of a Notice of MACT Approval under § 63.53(c) of the subpart, or issuance of a 40 CFR part 70 permit, whichever is earlier, any State, to whom authority for implementation of this subpart has been delegated by the Administrator, shall provide a copy of the Notice of MACT Approval to the Administrator, and shall provide a summary of information pertinent to the MACT application in a standard format outlined in the "Guidelines for MACT Determinations."

§ 63.57 Requirements for case-by-case determination of equivalent emission limitations after promulgation of a subsequent MACT standard.

(a) If the Administrator promulgates an emission standard that is applicable to one or more emission units within a major source before the date a permit application under this paragraph is approved, the permit shall contain the promulgated standard rather than the emission limitation determined under § 63.55, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates an emission standard under section 112(d) of the Act that is applicable to a source after the date a permit is issued pursuant to § 63.52 or § 63.54, the permitting authority shall revise the permit upon its next renewal to reflect the promulgated standard. The permitting authority will establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier.

(c) Notwithstanding the requirements of paragraph (a) or (b) of this section, if the Administrator promulgates an emission standard that is applicable to a source after the date a permit application is approved under § 63.52 or § 63.54, the permitting authority is not required to change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is at least as stringent as that required by the promulgated standard.

[4] EPA is releasing for comment the "Draft Guidelines for MACT Determinations" available from the National Technical Information Service (NTIS) Document Number PB93-163283; 5285 Port Royal Rd., Springfield, VA 22161; NTIS telephone 703-487-4650.

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July 13, 1993

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Preservation of Multifamily Low Income Housing and Funding Proposal for Intermediaries for Administering Preservation Technical Assistance Grants, et al.; Interim Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 236, 241, and 248

[Docket No. R-93-1655; FR 3384-I-01]

RIN 2502-AF83

Preservation of Multifamily Low Income Housing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements sections 304, 305, 306, 307, 308(b), 309, 312, 313 (a) and (b)(1), 316 (a) and (b), and 331 of the Housing and Community Development Act of 1992. In brief, these amendments permit public entities to become mortgagors of projects with mortgages insured under section 236 of the National Housing Act; authorize the Department to insure equity and acquisition loans for a term of 40 years and combine rehabilitation loans with equity or acquisition loans; protect proprietary information submitted by owners as part of their plans of action; require regulations setting forth the Department's procedures and criteria for approving plans of action to prepay or terminate; ensure that owners receive an 8 percent annual authorized return during the rent phase-in period; ensure that priority purchasers receive incentives sufficient to meet project oversight costs and receive an 8 percent annual authorized return on any actual cash investment and reimbursement for all reasonable transaction expenses; allow resident councils purchasing under a resident homeownership program to assume the federally-assisted mortgage; require low-income affordability restrictions to be maintained on all units not sold to residents; eliminate the requirement that limited equity cooperatives transfer ownership to residents in a timely manner; establish a technical assistance program for priority purchasers; impose LIHPRHA (the preservation program enacted in 1990) notification requirements on ELIHPA (the preservation program enacted in 1987) owners; and ensure that owners under ELIHPA are not refused incentives based on the date they filed a plan of action.

DATES: Effective date: The provisions of this rule are effective July 13, 1993.

Section 241.1060 applies on July 13, 1993 to projects being processed under subpart B of part 248 and also applies on August 12, 1993 to projects being processed under subpart C of part 248.

Comment due date: September 13, 1993.

ADDRESSES: Submit written comments to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Standard Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Telephone, voice, (202) 708–2300; TDD, (202) 708–4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The Information collection requirements contained in this rule have been submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, HUD Desk Officer, room 3001, New Executive Office Building, Washington, DC 20503, for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Subtitle A of title III of the Housing and Community Development Act of 1992 (Pub. L. 102–550 (106 Stat. 3672), approved October 28, 1992) ("title III") amends certain provisions of section 236(j) of the National Housing Act, regarding the provision of Federal mortgage insurance for multifamily projects, section 241(f) of the National Housing Act (12 U.S.C. 1715z–6), concerning supplementary financing of insured mortgages, and subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act, the Low Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101–625; 12 U.S.C. 4101 *et seq.*) ("LIHPRHA"), the successor to title II of the Housing and Community Development Act of 1987, the Emergency Low Income Housing Preservation Act of 1987 (Pub. L. 100–242; 12 U.S.C. 1715*l* note) ("ELIHPA"), governing the preservation of privately-owned multifamily low income housing. The history of the preservation programs is set forth in an interim rule implementing LIHPRHA which was published on April 8, 1992 at 57 FR 11992, (the "April 1992 interim rule") and will not be repeated here.

This interim rule implements certain provisions of title III by amending parts 236, 241 and 248 of the Department's regulations, as addressed in the following discussion. Other provisions of title III were implemented by interim rules published on December 3, 1992 at 57 FR 57312 and January 15, 1993 at 58 FR 4870. One remaining provision of title III, section 316(c), concerning insuring equity and acquisition loans under shared-risk agreements with State housing finance agencies, has not yet been implemented.

It should be noted that the following discussion uses "LIHPRHA" when addressing statutory changes that affect title II of the Housing and Community Development Act of 1987, as amended by LIHPRHA, and uses "ELIHPA" when discussing changes which affect title II of the Housing and Community Development Act of 1987, as in effect on November 27, 1990, the day before enactment of LIHPRHA.

Part 236—Mortgage Insurance and Interest Reduction Payment for Rental Projects

Section 236.10 (Eligible Mortgagors)

Section 331 of title III amends section 236(j)(4)(A) of the National Housing Act to permit public entities to be mortgagors of mortgages insured under section 236 of the National Housing Act. Prior to this amendment, section 236(j)(4) of the National Housing Act authorized a mortgage to be insured under the Section 236 program only if the mortgage was executed by a "private mortgagor eligible under subsection (d)(3) or (e) of section 221 [of the National Housing Act]." Section 236(b) of the National Housing Act contained a similar provision, excluding public mortgagors under the section 236 State-financed "non-insured" program. In section 203(a)(1) of the HUD Reform Act of 1989, Congress amended section 236(b) of the National Housing Act to permit public mortgagors of State-financed section 236 projects, however, Congress did not make a comparable amendment to section 236(j)(4)(A). This oversight is now corrected by section 331 of title III.

Section 236.10 of title 24 of the Code of Federal Regulations, which governs eligible mortgagors under the section 236-insured program, is amended in this

rule by removing the existing language in paragraph (e) and adding the language contained in § 221.510(b), which lists the eligible public mortgagors for the section 221 program. The § 221.510(b) language is used in § 236.10 because section 236(j)(4)(A) states that eligible mortgagors under the section 236-insured program are those which are eligible under section 221(d)(3) and (e) of the National Housing Act. Section 221.510(b) implements the eligibility requirements of section 221(d)(3) and (e) of the National Housing Act.

Section 236.60 (Excess Rental Charges)

Section 236.60 of the Department's regulations addresses excess rental charges under the section 236 program. Due to an error in publishing a revision to § 236.60, on September 21, 1990 at 55 FR 38958, part of the provision was inadvertently removed from the Code of Federal Regulations. This rule restates the correct text of § 236.60. This amendment is a correction and is not part of the implementation of the Housing and Community Development Act of 1992.

Section 236.901 (Audit)

Because of the inclusion of public entities as eligible mortgagors under the section 236-insured program, § 236.901 is amended to require State and local governments that are mortgagors of mortgages insured or held by the Commissioner under section 236 of the National Housing Act to be subject to the Department's audit requirements, set forth in part 44 of title 24 of the CFR.

Part 241—Supplementary Financing for Insured Project Mortgages

Subpart E—Insurance for Equity and Acquisition Loans—Eligibility Requirements

Section 241.1060 (Maturity)

Section 316(a) of title III amends section 241(f)(5) of the National Housing Act, by adding new subparagraphs (A) (i) and (ii) which establish terms of up to 40 years for equity loans and not less than 40 years for acquisition loans that are insured pursuant to an approved plan of action under LIHPRHA. Section 316 of title III amends section 241(f) of the National Housing Act, as that section was amended by LIHPRHA. However, section 316 does not amend section 241(f) as it existed prior to amendment by LIHPRHA. In accordance with section 604(c) of LIHPRHA, section 241(f), as it existed immediately before enactment of LIHPRHA (i.e., on November 27, 1990), is the statute under which equity loans are insured for projects under ELIHPA. Because section 316(a) does not amend section 241(f) as it was in effect on November 27, 1990, section 316(a) has no impact on equity loans for projects under ELIHPA. Equity loans under ELIHPA may, in accordance with section 241(f)(2)(B) as in effect on November 27, 1990, "have a maturity and provisions for amortization satisfactory to the Secretary."

The Department stated this interpretation of the applicability of section 241(f) to ELIHPA projects in the preamble to the proposed rule to implement LIHPRHA at 56 FR 20281–20282, published on May 2, 1991 (the "May 1991 proposed rule"), as follows:

> [O]wners whose plans of action are processed under [ELIHPA] will be subject to section 241(f) as it existed under [ELIHPA], while owners whose plans of action are processed under [LIHPRHA] will be subject to section 241(f) as amended by [LIHPRHA]. Although section 602(a) [of LIHPRHA] amends section 241(f) and, under section 605 [of LIHPRHA], is effective upon enactment of [LIHPRHA] i.e., on November 28, 1990), it is the Department's view that the provisions of section 241(f) as they existed prior to their amendment remain in effect for owners who are or will be seeking approval of plans of action under [ELIHPA] and subpart C of part 248. The Department takes this position because section 241(f) was originally enacted by section 231 of [ELIHPA], which is subpart B of title II of [ELIHPA] and is thus part of the "Emergency Low Income Housing Preservation Act of 1987," * * * and * * * under 604 (a) and (b) of [LIHPRHA] owners retain their right to proceed under [ELIHPA] and subpart C.

Based on this interpretation, the Department has continued to permit equity loans under ELIHPA of up to 90 percent of the projected net operating income of the project (see section 241(f)(2)(A) of the National Housing Act as in effect on November 27, 1990 and 24 CFR 241.1065). Equity loans under LIHPRHA are limited to the lesser of 70 percent of extension preservation equity or an amount supportable by the project on the basis of an 8 percent return on the extension preservation equity, subject to normal debt service requirements (see section 241(f)(2)(B)(i) of the National Housing Act as of November 28, 1990 and 24 CFR 241.1067).

Before enactment of the Housing and Community Development Act of 1992, section 241(f), both as in effect before November 28, 1990 and as amended by LIHPRHA, authorized the Department to use its discretion in establishing loan terms for equity and acquisition loans which are insured by HUD. The Department, in initially implementing ELIHPA, permitted equity loans with up to 40-year terms. However, after analyzing the relevant data, the Department determined that a 20-year equity loan maturity would be sufficient to ensure that owners received the annual authorized return on their investment and the shorter loan terms would also protect the FHA insurance fund from losses due to mortgage insurance claims. Based on this analysis, the Department, in the May 1991 proposed rule, published at 56 FR 20262, proposed that loan terms for equity loans (for both ELIHPA and LIHPRHA owners), and the newly authorized acquisition loans (for LIHPRHA owners), would be for 20 years or the remaining term of the first insured mortgage, whichever is longer.

In response to this proposal, the Department received 86 public comments objecting to the 20-year loan term and requesting a return to the 40-year term. The Department received no comments in favor of the 20-year loan term. The bases for the objections are set out in the preamble to the April 1992 interim rule at 57 FR 12032. In the April 1992 interim rule, the Department maintained its position that equity and acquisition loans would be insured for 20 years or the remaining term of the first insured mortgage, whichever is longer. The Department received two comments on the April 1992 interim rule concerning loan terms and both commenters objected to the 20-year term and suggested that the Department return to its original policy of insuring loans for 40 years.

In addition to the public comments received by the Department, the legislative history to the Housing and Community Development Act of 1992 indicates Congress' opposition to the shorter loan term. In a summary of the Housing and Community Development Act of 1992 presented on the Senate Floor, Senator Cranston stated that,

> The conferees are disturbed that owners were induced to file [ELIHPA] notices of intent and proceed with plans of action based on HUD's practice of providing a 40-year loan, only to have HUD change the rules in April 1992. The foreshortening of the 241(f) loan term is jeopardizing pending sales of [ELIHPA] projects to nonprofits and public agencies, and undermining the legitimate expectations of owners who are willing to extend affordability restrictions in exchange for incentives. The clear intent of the conferees is to require 40-year section 241(f) loans for projects proceeding under ELIHPA. 138 Cong. Rec. S17909 (October 8, 1992), (statement of Sen. Cranston).

Because of the foregoing legislative history and the overwhelming number of comments received by the Department in favor of the 40-year loan

term, the Department has decided to administratively change its policy and apply the longer loan term to all equity loans under ELIHPA, as well as to increase the equity loan terms under LIHPRHA in accordance with section 316(a) of title III. Therefore, this rule amends § 241.1060 to provide for equity loan terms of up to 40 years under both ELIHPA and LIHPRHA.

Section 241.1060 is also amended to allow 40-year loan terms for acquisition loans under LIHPRHA. (Acquisition loans were authorized under section 602(a) of LIHPRHA but were not authorized under ELIHPA, and this rule does not add acquisition loans as an incentive under ELIHPA.) While section 316(a) permits the Department to use its discretion and insure acquisition loans for longer than 40 years, HUD's practice has always been to insure loans for no more than 40 years. A longer term would pose a greater risk to the FHA insurance fund and would have little impact on a mortgagor. Extending the loan term beyond 40 years would result in lower debt service payments, but this impact is de minimis after the fortieth year. Because of this, the Department will insure acquisition loans for a term equal to 40 years.

The revised § 241.1060 is an interim rule which is effective immediately upon publication for LIHPRHA owners and 30 days after publication for ELIHPA owners. Because the public had the opportunity to comment on the 20-year loan term in both the May 1991 proposed rule and the April 1992 interim rule; and HUD received 88 public comments opposed to the 20-year loan term and in favor of a 40-year term and no comments in support of the 20-year term, the Department believes it is unnecessary, in accordance with 24 CFR 10.2, to publish another proposed rule for notice and comment prior to implementing a regulatory change permitting 40-year terms for equity loans under ELIHPA. Therefore, the revised § 241.1060 is published as an interim rule. For owners receiving equity or acquisition loans as an incentive under LIHPRHA, the rule change is effective on the date of publication, in accordance with section 332 of title III. For owners receiving equity loans as an incentive under ELIHPA, the rule change is effective thirty days after the date of publication, in accordance with 24 CFR 10.2.

Section 241.1067 (Maximum Loan Amount—Loans Insured in Connection With a Plan of Action Under Subpart B of Part 248 of This Chapter)

Section 316(a) of title III amends section 241(f)(2)(B)(i) and (3)(B) of the National Housing Act to require that rehabilitation costs be included in the amount of the maximum equity and acquisition loans insured under section 241(f). Section 316(a) also deletes section 241(f)(6) of the National Housing Act which left to the Secretary's discretion combining equity and acquisition loans insured under section 241(f) with rehabilitation loans insured under section 241(a). The preamble to the April 1992 interim rule, at 57 FR 12031, addressed the Department's intention to consider combining rehabilitation and equity or acquisitions loans in order to facilitate processing of these loans.

The Senate Committee on Banking, Housing, and Urban Affairs (the "Committee"), in a report concerning S. 3031, one of the bills from which title III was derived, indicates that the Committee altered the position originally taken by the conferees in drafting LIHPRHA, where the conferees expected that combining the loans could be done effectively. The Committee concludes in the Senate Report that there is no "mechanism for combining the underwriting of rehabilitation and equity or acquisition loans under the section 241 program." Sen. Rpt. No. 332, 102d Cong., 2d Sess., at 68, 69 (the "Senate Report"). The Committee also states that S. 3031, which contains language identical to section 316(a) (1) and (2) of title III, "would enable loans insured under section 241(f) of the National Housing Act to cover the amount of rehabilitation costs required by the preservation plan of action and related charges."

The Senate Report indicates that the Committee does not intend for HUD to combine section 241(a) rehabilitation loans with section 241(f) equity and acquisition loans, as was formerly contemplated by section 241(f)(6). Rather, the Committee intends that rehabilitation costs and related charges be included as part of the 241(f) loan. This amendment authorizes the Department to insure 241(f) equity and acquisition loans in amounts sufficient to cover 100 percent of the costs to rehabilitate the project plus all related charges. Prior to this amendment, an owner or purchaser could obtain a section 241(a) loans in addition to a 241(f) equity or acquisition loan, but the 241(a) loan would cover only 90 percent of the value of improvements, additions and equipment and the owner or purchaser would be required to finance 10 percent of the rehabilitation costs itself.

While owners may now receive a 241(f) loan to cover all of the rehabilitation costs, they will also be required to escrow a larger amount of the loan proceeds. Section 316(a) amends section 241(f)(2)(B)(i) to add rehabilitation costs and related charges to an equity loan, however, section 316 does not amend section 241(f)(2)(B)(ii) which requires that "10 percent of the loan amount" be escrowed for a 5-year period. There is no legislative history indicating whether or not Congress intended to leave section 241(f)(2)(B)(ii) unamended, but, because section 241(f)(2)(B)(ii) immediately follows the amended section 241(f)(2)(B)(i), this implies that Congress did not merely overlook this provision, but intended to require a larger escrow deposit, possibly as a concession for permitting a larger loan amount.

In the absence of any legislative history to the contrary, the Department has not amended § 241.1069(a) which requires that 10 percent of total equity loan amount be placed in escrow for 5 years. Owners of LIHPRHA projects receiving equity loans under § 241.1067, as amended, will be required to escrow 10 percent of the entire loan amount, including rehabilitation costs and related charges. The Department specifically requests comments from the public on this interpretation.

Increasing the maximum equity and acquisition loan amounts also affects the calculation of preservation rents under § 248.121. Paragraph (c) of § 248.121 includes in the calculation of extension preservation rent, an owner's annual authorized return and debt service on any rehabilitation loan. Paragraph (d) of § 248.121 includes as part of transfer preservation rent, debt service on an acquisition loan and debt service on any rehabilitation loan. Because preservation rents must be calculated early in the preservation process, prior to the calculation of actual loan amounts, the Department must estimate certain factors in determining debt service. In calculating the debt service on a rehabilitation loan, the Department assumes, in accordance with section 241(a) of the National Housing Act, that the loan amount would cover 90 percent of the rehabilitation. However, because section 316(a) of title III requires that equity and acquisition loans include 100 percent of the rehabilitation costs and related charges, this affects the Department's estimates of preservation rent.

When the owner is retaining the property, it has the choice of receiving its authorized return on an annual basis, or receiving all or a portion of the return in an equity loan. If an owner chooses an equity loan, 100 percent of the rehabilitation costs will be included in the loan amount and the owner would

not need a section 241(a) rehabilitation loan. If an owner does not request an equity loan, it may cover 90 percent of the costs of rehabilitation through a 241(a) loan. However, at the time preservation rents are determined, HUD will not know which route an owner will choose. For this reason, when calculating the extension preservation rent, the Department will assume that the rehabilitation loan will cover 90 percent of the value of improvements, additions and equipment. It is important to note that in setting actual tenant rents at the time the plan of action is approved, the Department will include debt service payments on rehabilitation costs whether they are included as part of the Section 241(f) equity loan or in a separate Section 241(a) rehabilitation loan.

As a result of the statutory amendments, where the property is to be transferred, a purchaser will receive a section 241(f) acquisition loan which will include rehabilitation costs, making it unnecessary for the purchaser to obtain a section 241(a) rehabilitation loan. Therefore, when determining the transfer preservation rent, the Department will calculate the debt service on a rehabilitation loan which is assumed to cover 100 percent of the rehabilitation costs plus related charges.

Section 316(a)(3)(A) also amends section 241(f) of the National Housing Act by adding as part of the new subparagraph (A)(i) the requirement that equity loans have "amortization provisions which will, to the extent practicable, support the loan amount authorized * * *." Paragraph (a)(ii) of § 241.1067 of the April 1992 interim rule is amended by this rule to conform to this requirement.

Section 241(f)(5)(B) of the National Housing Act, as amended by section 316(a)(3)(B) of title III, provides that equity and acquisition loans should bear interest at a rate agreed upon by the mortgagor and mortgagee and be secured in such manner as the Secretary may require. No revisions to part 241 are needed to implement this amendment. Section 241.1070 already permits borrowers and lenders to determine interest rates for equity and acquisition loans. The Secretary was authorized under section 241(f) of the National Housing Act, both before and after its amendment by LIHPRHA, to use his discretion as to loan security, and § 241.1045 requires the lender to use security instrument forms approved by the Commissioner.

Section 241.1068 (Renegotiation of an Equity Loan)

Section 316(b) of title III amends section 241(f) of the National Housing Act by adding a new paragraph (10) directing the Department to renegotiate and modify the terms of an equity loan, at an owner's request, if "the loan was made" within 30 days before enactment of the Housing and Community Development Act of 1992 or within 90 days after such date and the loan was made pursuant to an ELIHPA plan of action "and accepted by the Secretary for processing in December 1991." A new § 241.1068 has been added to the Department's regulations to implement this provision.

The language of section 316(b) is ambiguous in certain respects and there is no legislative history indicating Congressional intent behind this provision. Therefore, the Department has used its discretion in interpreting this provision. The statutory language states that HUD should renegotiate the terms of a loan depending on when "the loan was made." The plain meaning of the phrase "the loan was made" seems to refer to the loan closing. Hence, § 241.1068 provides for renegotiation of equity loans for which a loan closing occurred between September 28, 1992 and January 26, 1993.

Under section 316(b) of title III, in order for an equity loan to be renegotiated, the loan must also be "made pursuant to a plan of action under the provisions of [ELIHPA] and accepted by the Secretary for processing in December 1991." This language does not clearly indicate whether it is the loan application or the plan of action which must have been accepted for processing in December 1991. If it is assumed that this language refers to the loan application, this would indicate a period of at least nine months between submission of the application and the issuance of a commitment. Because commitments are generally issued in a much shorter time period, the Department has assumed in this rule that this statutory language requires that the plan of action, and not the loan application, must have been submitted in December 1991.

As long as the owner meets the requirements of § 241.1068, and the owner and the lender agree to change the terms of the loan and the change is in compliance with the Department's regulations and statutory authority, the Department will approve a refinancing or modify the commitment for mortgage insurance. However, under section 241(f) the Department insures loans made by private lenders, but the Department is not a party to the loan agreement and has no right to require renegotiation of any loan terms. Therefore, if the lender refuses to change the loan maturity, the Department will not modify its commitment or approve any refinancing.

Pursuant to section 316(b) of title III, the Department will approve a refinancing or modify the mortgage insurance commitment where such refinancing or modification involves a change in loan term, interest rate, or debt service payments, as long as the debt service does not exceed the limits established in § 241.1065 and the loan amount does not exceed ninety percent of the owner's equity, as determined in the approved plan of action.

Part 248—Preservation of Multifamily Low Income Housing

Subpart A—General

Section 248.5 (Election To Proceed Under Subpart B or Subpart C of This Part)

This rule revises §§ 248.211, 248.213 and 248.217 to require owners electing under § 248.5 to proceed under subpart C to comply with the notice requirements of subpart B; revises § 248.5 to require HUD to provide sufficient assistance to nonprofit organizations purchasing projects for which an election was made, to meet "project oversight costs;" and revises § 248.5 to ensure that owners who elected subpart C are not denied incentives because of the date they filed a plan of action.

Section 313(a) of title III amends section 604(a) of LIHPRHA to require owners who elect to proceed under ELIHPA, to comply with sections 212(b), 217(a)(2) and 217(c) of LIHPRHA. These provisions require owners to notify tenants, State and local governments, and the mortgagee of its submission to HUD of a notice of intent, plan of action, and any revisions to a plan of action. Sections 248.211, 248.213 and 248.217 have been amended to apply the LIHPRHA notification requirements to owners who elected to proceed under ELIHPA. HUD includes in the class of owners who "elected" to proceed under ELIHPA not only those owners who filed a notice of election to proceed under § 248.5, but all owners who continued processing under ELIHPA after the enactment of LIHPRHA.

Section 313(b)(1)(A) requires HUD to provide incentives sufficient to meet project oversight costs to nonprofit purchasers who purchase projects for which an election has been made under

section 604 of LIHPRHA to proceed under ELIHPA. A new paragraph (e), which restates the statutory language, is added to § 248.5 by this rule. A definition of "project oversight costs" is also added to § 248.201 of subpart C of this part, which is cross-referenced in § 248.5(e). That definition is discussed in the preamble section concerning § 248.201. Sections 248.101, 248.145 and 248.157 are also amended to incorporate project oversight costs as a cost for which incentives may be provided under subpart B for priority purchasers.

In a summary of the Housing and Community Development Act of 1992 presented on the Senate Floor, Senator Cranston stated that "the conferees expect the Secretary to adjust project rents and increase the section 8 assistance provided to [priority] purchasers—amending the approved plan of action, if necessary—in order to cover project oversight expenses, and to adopt this practice with respect to future nonprofit purchases under the transitional rule." 138 *Cong. Rec.* S17909 (October 8, 1992), (statement of Sen. Cranston). This legislative history implies that HUD should provide additional incentives for project oversight costs to owners who are already receiving incentives under an approved plan of action. HUD will do so upon the owner's request. Section 313(b)(1) of title III amends Section 604(c) of LIHPRHA by adding subsection (1)(b), which prohibits the Secretary from refusing to offer incentives to owners filing plans of action under the Emergency Low-Income Housing Act of 1987 based solely on when the owner filed the plan of action. The subsection further applies this provision to any owner who filed a Notice of Intent under section 222 of ELIHPA before October 15, 1991.

The Department, to its knowledge has never refused to offer incentive to any owner who has filed a plan of action, regardless of the date of filing, under ELIHPA. The legislative history with respect to this provision offers only one clarification as to its intent. The House Committee report references the Department's change in policy for offering increased distributions based on revalued equity on July 16, 1991. July 16, 1991 is the effective date of a Notice of Redelegation of Authority to Regional Administrators to approve plans of action, published on July 23, 1991 at 56 FR 33763. July 16, 1991 is also the date that the administrative guidance for reviewing and approving plans of action under ELIHPA, HUD Notice H91–29, "Processing Plans of Action Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990" ("Notice H91–29"), became effective.

Until Notice H91–29 was made effective, the Department followed a policy of allowing so-called "unlimited distributions," access to all surplus cash, to any owner requesting increased distributions based on revaluated equity. Since incentives authorized under section 224 of ELIHPA also included access to residual receipts, an owner could request both incentives in the plan of action, with the effect of having an increased distribution and full access to residual receipts. A sensible alternative was to allow unlimited distributions which would have the same effect. (A corresponding policy was to allow annual rent increases for units receiving Section 8 Loan Management Set-Aside assistance with the Annual Adjustment Factor, and to allow rent increases for units not receiving such Section 8 assistance by an administrative formula.) Further since the administrative rent limitations imposed on plans of action under ELIHPA might not yield to any owner a return on equity reflecting a project's full, revalued equity, allowing "unlimited" distributions was viewed by the Department as a correction to a design defect in the authorizing legislation, which was in turn "corrected" by LIHPRHA.

The policy of allowing "unlimited distributions" was found to be unworkable when applied to section 236 projects, because it rendered the collection of income in excess of the basic rent, required by section 236(g) of the National Housing Act, impossible. This is the case because the calculation of basic rent requires a fixed distribution for limited distribution mortgagors. Despite the many changes that ELIHPA made to both the nature and operation of a section 236 project, it had not repealed section 236(g) and the requirement to collect excess income. In fact, section 219 of LIHPRHA reinforces Congressional intent for the Department to collect excess income from section 236 projects with approved plans of action under that statute. Although section 219 of LIHPRHA has no legal bearing on the literal construction of ELIHPA, the Department finds it instructive with respect to Congressional intent regarding section 236 projects under the general heading of preservation.

Thus, the Department with the publication of Notice H91–29 reverted to a policy of negotiating distributions, generally reflecting net cash at the end of the statutory rent phase-in period, and corrected what was generally held as an administrative error. Further, rent increases would henceforth be governed by the budgeted method, common now to virtually all projects insured under sections 221(d)(3) and 236 of the National Housing Act. Although only a few Section 236 projects had plans of action approved with surplus cash distributions, the Department did not seek to renegotiate the plans of action after the adoption of the new policy, choosing not to penalize owners, who had negotiated plans of action in good faith, for the Department's administrative error.

Section 313(b)(1) makes it clear that the Congress wishes the Department to return to its policy of surplus cash distributions for plans of action approved under ELIHPA. It is also clear that the Congress intends that HUD continue to collect excess income from section 236 projects. Therefore, section 221(d)(3) mortgagors may retain all rental collections over and above normal operating costs and debt service as distributable, subject to the surplus cash computation. Section 236 projects may do likewise, subject to the collection of excess income and the surplus cash computation. In order to determine the amount of excess income to be collected, the Department must establish a basic rent.

The basic rent will be set in the following manner: (1) Units assisted by Section 8 loan management set-aside will have a basic rent of the lesser of the Section 8 existing fair market rent or the rent for comparable unassisted units; (2) low income units not assisted by Section 8 loan management set-aside will have a basic rent set at 30 percent of one twelfth of 75 percent of the area median income (or 125 percent of the national median income, if less) adjusted for unit size; (3) moderate income units will have a basic rent set at 30 percent of one twelfth of 90 percent of the area median income (or 125 percent of the national median income, if less) adjusted for unit size. Section 236 market rents will be established in accordance with current procedures. Owners will be required to remit monthly rental income collected in excess of the aggregate basic rent, not to exceed the amount of the monthly interest reduction payments.

Rent increases for units assisted by section 8 will be adjusted by the Annual Adjustment Factor. Rent increases for units not assisted by Section 8 will be adjusted by adjustments to the "factored rents" set forth in Notice H91–29 or when tenant incomes are recertified, depending on which method the owner chooses for determining tenant rents for units not assisted by Section 8 loan

management set-aside at plan of action approval. Owners may at their option apply for and receive a limited distribution under ELIHPA. For owners choosing this option, rent increases will be governed by the budget method.

There is no requirement in section 313(b) of title III nor is there any indication in the legislative history that Congress intended that this provision retroactively apply to any owner who has had a plan of action approved under the conditions set forth in Notice H91–29. Therefore, the Department will not reconsider plans of action which have received final approval in accordance with § 248.218.

Any Section 236 project which has received a surplus cash distribution as an incentive will have section 236 basic and market rents calculated in accordance with the above methodology effective with the first approved increase in project rents after the effective date of this rule. However, the collection of excess income foregone due to the Department's administrative error will not be required.

Subpart B—Prepayment and Plans of Action Under the 1990 Act

Section 248.101 (Definitions)

Section 248.101 is revised by this rule to add definitions of "project oversight costs" and "proprietary information." Sections 307, 308(b) and 313(b) of title III require HUD to provide sufficient incentives to priority purchasers of eligible low income housing under LIHPRHA, and to nonprofit purchasers of projects for which an election was made under ELIHPA, to meet "project oversight costs." The definition of "project oversight costs" recognizes that some priority purchasers may not have the experience and expertise needed to own and operate low income housing and may want to hire a third party to provide assistance, education and training for the board and members of the priority or nonprofit purchaser. The Department may provide incentives to cover costs incurred by priority purchasers hiring third parties to assist the priority purchasers' board of directors in making ownership and management decisions. Because the board of directors must make all ownership decisions, project oversight costs must be directly related to educating and supporting the board in its decisionmaking. It is intended that third parties will provide project oversight to facilitate the functions of the board of directors, rather than to usurp the board's responsibilities. Since project oversight is intended to provide education and training to priority purchasers which may not have the experience necessary to own and operate low income multifamily housing, the Department expects that as priority purchasers gain this experience, project oversight costs will diminish and eventually be eliminated. The Department is considering limiting project oversight costs to the first five years of operation after plan of action approval and specifically requests comments regarding whether a five-year limitation is reasonable.

Section 304 of title III amends section 217(a)(2) and (c) of LIHPRHA to require owners and the Department to make available to the tenants and the chief executive officer of the appropriate State or local government in the jurisdiction where the housing is located copies of all documentation supporting the plan of action and revisions to the plan of action, except for any documentation which HUD deems to be proprietary information. To implement section 304 of title III, this rule adds a definition of the term "proprietary information" to § 248.101 and amends the notice provisions of § 248.135 (c) and (f). The amendments to § 248.135 (c) and (f) are addressed in the following discussion of that section.

In his discussion on the Senate Floor, Senator Cranston indicated that tenants should have access to "all information submitted that is relevant to the preservation process, with a narrow exception. Only proprietary information is privileged. The privilege extends only to information which is equivalent to trade secrets, confidential financial information, such as partnership audits, personal financial information about partners in the ownership entity, or project tenants * * * in the case of documents that include both proprietary and nonprivileged information, it is the intent of the conferees that the documents be released, with the proprietary information redacted." 138 Cong. Rec. S17909 (October 8, 1992) (statement of Sen. Cranston). The Department has taken into consideration this statement in formulating its definition.

Section 248.135 (Plans of Action)

As discussed in the previous section, section 304 of title III amends section 217(a)(2) and (c) of LIHPRHA to require an owner and the Department to make available, upon request, to the tenants and the chief executive officer of the appropriate State or local government in the jurisdiction where the housing is located copies of all documentation supporting the plan of action and revisions to the plan of action, except for any documentation which HUD deems to be proprietary information.

Section 248.135(c) currently requires the owner to provide copies of its plan of action to the tenant representative and the officer of State or local government to whom the owner submitted a copy of its notice of intent. The owner is also required to post, in all occupied buildings, a summary of the plan of action which includes a statement that the tenants may obtain a copy of the plan of action from the tenant representative, the local HUD office or the owner. As noted in the preamble to the April 1992 interim rule, at 57 FR 12010, a plan of action is a complete, self-contained document, having all the information necessary for the Department to make the determinations required under LIHPRHA. All supporting documentation is included in, and is a part of, the plan of action itself and is available to the tenants and the State and local government under § 248.153(c). However, because of the direction in section 304 of title III, and in the event that there is some supporting documentation that is not included in the plan of action, this rule amends paragraphs (c) and (f) of § 248.135 in order to permit tenants and the State or local governments to request copies of the supporting documentation. In addition, § 248.101 is amended, as noted in the preceding discussion, to add a definition of "proprietary information."

Section 248.141 (Criteria for Approval of a Plan of Action Involving Prepayment and Voluntary Termination)

Section 305 of title III amends section 218 of LIHPRHA to require HUD to issue written findings based on an analysis of the evidence it relies on in approving a plan of action to terminate the low income affordability restrictions on eligible low income housing. Section 305 also directs the Department to publish, in a regulation, a procedure for determining whether the conditions needed to approve a plan of action to terminate the low income affordability restrictions exist and the type of evidence the Department will rely on in making its determination. This rule revises § 248.141 to include the Department's current policies and procedures, as set forth in HUD Handbook 4350.6, "Processing Plans of Action Under the Low Income Housing Preservation and Resident Homeownership Act of 1990" for approving plans of action under this section.

Section 248.145 (Criteria for Approval of a Plan of Action Involving Incentives)

Section 307(a) purports to amend section 220(d)(2) of LIHPRHA by adding the parenthetical language to the following provision: "[s]ubject to the availability of amounts approved in appropriations Acts, the Secretary shall, for approval plans of action, provide assistance sufficient to enable qualified purchasers (including all priority purchasers other than resident councils acquiring under the homeownership program authorized by section 226) to * * *" acquire the project, pay debt service on the federally assisted mortgage and the rehabilitation loan, meet project operating expenses and establish adequate reserves, receive an 8 percent return on actual cash investment, reimbursement for transaction expenses incurred by priority purchasers and training for resident councils under a resident homeownership program. This provision establishes the level of assistance the Department is authorized to provide to qualified purchasers under LIHPRHA.

The effect of section 307(a) would be to make section 220(d)(2) inapplicable to resident councils submitting a resident homeownership plan. However, because there is no other provision in LIHPRHA which indicates the level of incentives a resident council with a resident homeownership plan should receive, this amendment seems to be incorrect. Section 219(a) sets forth the amount of incentives which can be provided to an owner who retains the project and section 220(d)(2) does the same for purchasers where the owner decides to sell the project. If section 220(d)(2) is not applicable to resident councils with a homeownership plan, they would be the only entities which are not covered by a statutory provision defining the amount of incentives they may receive. This interpretation seems contrary to the entire preservation scheme which is intended to provide owners with a specific return on their investment while preserving the low income housing.

The position that Congress did not intend to amend section 220(d)(2) by adding the quoted parenthetical language is also supported by the fact paragraph (G) was not deleted from section 220(d)(2). Section 220(d)(2)(G) provides that the Department may award sufficient incentives to a resident council with an approved homeownership plan to cover, inter alia, the costs incurred to train the resident council and to provide homeownership training for the tenants. It would be unreasonable to make section 220(d)(2) inapplicable to resident councils with a homeownership plan and yet have a paragraph in that section which deals solely with those entities.

Rather than amending section 220(d)(2), the Department believes that section 307(a) is intended to amend section 220(d)(1) of LIHPRHA. If the quoted parenthetical language were added to section 220(d)(1), it would read as follows: "[I]f the qualified purchase is a resident council, the Secretary may not approve a plan of action for assistance under this section unless the council's proposed resident homeownership program meets the requirements under section 226. For all other qualified purchasers (including all priority purchasers other than resident councils acquiring under the homeownership program authorized by section 226), the Secretary may not approve the plan unless the Secretary finds that the criteria for approval under section 222 have been satisfied." Section 222 states that incentives cannot be provided unless binding commitments have been made to preserve the property as low income housing, to protect current tenants from displacement, to regulate rent increases for current and future tenants, and to ensure that the property is maintained in accordance with housing quality standards.

In implementing section 222, the Department, in § 248.145, inadvertently excluded from the criteria for approval under section 222 all resident councils, instead of just those resident councils under the resident homeownership program. It is likely that section 307(a) was intended to correct the Department's mistake in § 248.145. Section 248.145(a) is amended to apply to all resident councils, except those under the resident homeownership program.

While HUD interprets section 307(a) as intending to amend section 220(d)(1), section 307(a) could have been meant to amend section 221(d)(2) of LIHPRHA. Section 221(d)(2) authorizes the Department to provide grants to qualified purchasers to assist in the completion of sales and transfers under the mandatory sale procedures. It is possible that the language of section 307(a) was intended to exclude resident councils purchasing under a resident homeownership plan from receiving grants under section 221(d)(2). This position could be supported by section 226(a) of LIHPRHA which states that a resident homeownership plan should be developed by "[t]enants seeking to purchase eligible low income housing in accordance with section 220 * * *;" implying that resident homeownership is only an option under the voluntary sale provisions of section 220 and not the mandatory sale provisions of section 221. The Department requests comments which may clarify this matter.

Section 308(b) of title III amends section 222(a)(2)(G)(i) of LIHPRHA which governs future rent increases for tenants residing in projects with approved plans of action. Prior to this amendment, section 222(a)(2)(G)(i) stated that future rent adjustments generally would be made based on an annual adjustment factor applied to the portion of rent attributable to project operating expenses and by making changes in the owner's annual authorized return. Where there were extraordinary expenses which were not covered by the annual adjustment factor or the owner's return, an owner could appeal to HUD for an additional rent increase. Section 308(b) amends this provision by deleting all references to the annual authorized return and by adding the requirement that, when the owner is a priority purchaser, the annual adjustment factor be applied to the portion of rent attributable to project oversight costs, as well as that portion attributable to operating expenses. A definition of the term "project oversight costs" is also added to § 248.101.

Section 248.153 (Incentives To Extend Low Income Use)

Section 306 of title III amends section 219(a) of LIHPRHA to require the Department to provide incentives which would be sufficient to permit an owner to receive its annual authorized return "for each year after approval of the plan of action." Section 248.153(a)(1) is amended accordingly.

Section 306 also amends section 219(a) of LIHPRHA to permit HUD to provide the following incentives, in the following order of preference, to ensure that an owner receives its annual rate of return during the tenant rent phase-in period: (1) permitting owner access to residual receipts accounts; (2) deferring remittance of excess rent payments; and (3) increasing rents, as permitted under an existing Section 8 contract. To implement this provision, the Department adds a new paragraph (c) to § 248.153 stating that, if necessary to enable an owner to receive its annual authorized return during the tenant rent phase-in period required by § 248.145(a)(6), HUD shall permit the owner to withdraw funds from the residual receipts accounts. If this is inadequate, and the project is insured or assisted under section 236 of the National Housing Act, the owner may

defer remittance of excess income. If both of these incentives fail to permit an owner to obtain the annual authorized return, the Department will then temporarily increase Section 8 rents, as permitted under the existing Section 8 contract.

Seciton 248.153(b)(1) currently permits an owner to have access to the project's residual receipts accounts, "as necessary to enable the owner to realize the annual authorized return." Therefore, an owner will already receive this incentive during the rent phase-in period. Because the owner and the Department will be unable to ascertain in the first 12 months after approval of a plan of action whether the incentives awarded under the plan of action are sufficient to enable the owner to obtain its annual authorized return, the additional remedies permitted under the revised § 248.153(c) will be unavailable until one year after plan of action approval. If an owner can document, through an audit, that it is not receiving its annual authorized return, these remedies may be made available to the owner during the first year after plan of action approval. Otherwise, at the end of the first year, if it has been determined that an owner has not obtained its annual authorized return, an owner of a section 236 insured or assisted project will be permitted to defer remittance of excess rent payments, and an owner of a project, other than one insured or assisted under section 236, will receive an increase in rents, to the extent permitted by an existing section 8 contract. At the end of the second year of the rent phase-in period, if it is determined that an owner of a section 236 insured or assisted project still has not received the total annual authorized return, rents will be temporarily increased during the phase-in period to the extent permitted by an existing section 8 contract.

Section 248.157 (Voluntary Sale of Housing Not in Excess of the Federal Cost Limit)

Sections 307(b) through (d) of title III amend section 220(d)(2) of LIHPRHA to make available additional incentives for priority purchasers. Section 307(e) amends section 220(d)(3) of LIHPRHA to permit selling owners to retain a project's residual receipts account without a corresponding decrease in the sales price.

Section 307(b) authorizes HUD to provide sufficient incentives to meet project oversight costs where the owner is a priority purchaser. Section 220(d)(2)(D) previously permitted incentives at a level which would cover project operating expenses and establish adequate reserves, but did not include project oversight costs. Section 248.157(m)(4) is amended to include this cost. As previously noted, § 248.101 contains a definition of "project oversight costs" which sets forth the types of costs which can be covered by incentives.

Section 307(c) permits qualified purchasers to receive an 8 percent annual return on any cash investment, other than assistance provided under LIHPRHA, to acquire or rehabilitate the project. Prior to this amendment, section 220(d)(2)(E) allowed qualified purchasers to receive an adequate return on any actual cash investment to acquire the project. The Secretary was authorized to use his discretion to determine what would be considered an "adequate return." The current section 248.157(m)(5) restates the statutory language of section 220(d)(2)(E), but the preamble to the April 1992 interim rule expanded upon this by stating, at 57 FR 12021, that HUD would "build into the rent stream a return on any actual cash investment by the purchaser and debt service on any gap financing. The extra income must be allocated towards debt service payments on the non-federal loan, or if the return exceeds the debt service on the loan, then the surplus cash must be deposited in the residual receipts account * * *." In the Senate Report, on page 70, the Committee took issue with the fact that priority purchasers would have to return any surplus cash not needed for debt service to the residual receipts account, rather than retain it for their own purposes. In order to comply with statutory intent, § 248.157(m)(5) is revised to permit an 8 percent return for any actual cash investment made by priority purchasers to rehabilitate, as well as to acquire, eligible low income housing. The Department has also amended its administrative requirement that all surplus cash not needed for debt service be returned to the residual receipts account. Instead, priority purchasers will be permitted access to funds in the residual receipts account which are not needed for project purposes. As is the case with for-profit owners, HUD-approval will be required before funds may be withdrawn by priority purchasers from the residual receipts account.

Section 307(d) authorizes HUD to reimburse priority purchasers for "all reasonable transaction expenses associated with acquisition, loan closing and implementation of an approved plan of action." Section 220(d)(2)(F) originally allowed priority purchasers "an adequate reimbursement for transaction expenses relating to acquisition of the housing, subject to approval by the Secretary." Section 307(d) enlarges the scope of the term "transaction expenses" to permit reimbursement of expenses incurred in loan closing and implementation of an approved plan of action, as well as those expenses incurred in acquiring the property. Section 248.157(m)(6) is revised to restate the language of section 307(d). The Department specifically requests comments concerning the types of expenses which may be incurred by priority purchasers in implementing an approved plan of action. The Department will consider any comments it receives on this point in order to expand on this provision in the administrative guidance it is currently formulating.

In the current § 248.157(m)(6), the Department, using its discretion to implement section 220(d)(2)(F), placed a cap on the reimbursement of transaction expenses at 5 percent of the project's transfer preservation equity, made reimbursement subject to HUD's approval and required that the reimbursement be "in accordance with standards applicable to insured loan transactions under this chapter." The Senate Report indicates, on page 71, that the Committee objected to both the 5 percent cap and the requirement that the reimbursement be in accordance with other loan transactions. "HUD's regulations arbitrarily limit the reimbursement of transaction expenses in two ways: first, by setting a cap of 5 percent of preservation equity; and second, by conditioning reimbursement on 'standards applicable to insured loan transactions under this chapter.' These limits are contrary to the legislative intent that the reimbursement be 'adequate' for all reasonable expenses. The limits are also contrary to industry practice, because transaction expenses do not correlate with the value of [sic] size of the property acquired." Because of this amendment and the Committee' objections, § 248.157(m)(6) is amended to remove the 5 percent cap and the requirement that reimbursement be comparable to other loan transactions.

Section 307(e) amends section 220(d)(3)(A) which provided that where a selling owner retained any residual receipts from the project upon sale, the sale price would be decreased by the amount of the residual receipts being retained. As noted in the preamble to the proposed rule to implement LIHPRHA, at 56 FR 20277, published on May 2, 1991, the Department took the position that section 220(d)(3)(A), as enacted, "would deprive an owner of a portion of the project's value" because the project's preservation value does not

take into consideration the amount of the project's escrow accounts, including residual receipts. Section 307(e) corrects section 220(d)(3)(A) by eliminating the requirement that residual receipts retained by the owner be deducted from the sale price. Section 248.157(n) is revised to implement this amendment.

Section 248.173 (Resident Homeownership Program

Section 309 of title III amends section 226 of LIHPRHA, which governs the resident homownership program, to prohibit the Department from requiring prepayment of the mortgage as a condition of approving a resident homeownership plan of action; to require low income use restrictions to remain on all rental units; and to take away the Department's discretion to determine whether a purchase under the resident homeownership program involves an assumption of the mortgage and whether the purchasing entity intends to own the housing on a permanent basis.

Section 248.173(s) prohibits resident councils from assuming the federally-assisted mortgage under a resident homeownership program where fee simple ownership of the project's units are being transferred to the tenants. However, § 248.175, which permits resident councils to purchase and operate a project as a limited equity cooperative under a resident homeownership plan, does not prohibit mortgage assumptions. The Department revises paragraph (s) of § 248.173 to clarify that a resident council may choose to assume the federally-assisted mortgage or prepay the mortgage in connection with a resident homeownership plan. If the resident council chooses to assume the mortgage, the project must be sold to a limited equity cooperative pursuant to § 248.175 and the project must be operated as a limited equity cooperative.

The Department limits mortgage assumptions to limited equity cooperatives because where there is to be a mortgage assumption, the only workable form of resident homeownership is as a cooperative where shares in the project are transferred to the tenants, rather than fee simple ownership of the units. Section 226(b)(5)(A)(iii) requires homeowners, whether purchasing a share in the project, or the actual unit, to execute a promissory note payable to the Secretary. It would be infeasible where fee simple ownership of units is transferred, to require promissory notes for each unit, as well as to have a mortgage outstanding on the entire project.

Where the federally assisted mortgage is assumed by a resident council, the regulatory agreement on the project would remain in place and all current and prospective homeowners would be required to comply with low income restrictions. Paragraph (b)(10) of section 226 of LIHPRHA requires as a condition of assuming the mortgage, that the low income restrictions on the project remain in place for the remaining useful life of the project. However, section 226(b)(3) of LIHPRHA requires that only initial homeowners meet the low income restrictions established by HUD. (Note that the Department, in § 248.173(g), requires initial owners to fall within the same type of income profile imposed on projects which are transferred under § 248.157.) Subsequent owners are not subject, either by statute or by regulation, to meet income requirements. This implies that Congress contemplated that resident councils could choose to assume the federally assisted mortgage and continue the low income use restrictions for the project's remaining useful life or could pay off the mortgage and eliminate the low income use restrictions once all initial homeowners have sold their units to subsequent owners. The revised § 248.173(s) provides resident councils with these two options.

In order to ensure that low income use restrictions continue to be applied to all rental units for the period during which they remain as rental units, paragraph (g) of § 248.173 is revised to require as a condition of approval of a resident homeownership program, that all tenants residing in rental units be subject to the protections of § 248.145 (a)(5), (a)(6), (a)(7), and (a)(9), which restrict rent levels, and that the rental units be available to new tenants in the proportions of very low, low and moderate income tenants, as required under § 248.145(a)(8).

Section 248.175 (Resident Homeownership Program—Limited Equity Cooperative)

Section 309 of title III also amends section 226(b)(8) of LIHPRHA to add the phrase "Except in the case of limited equity cooperatives, * * *" before "resident councils shall transfer ownership of the property to tenants within a specified period of time that the Secretary determines to be reasonable." It is unclear whether this amendment is intended to delete all time requirements for transfer of ownership shares from a limited equity cooperative to the tenants, such as the 4-year requirement imposed in § 248.175(b), or whether this is a technical change to omit limited equity cooperatives from the requirement that "ownership of the property" be transferred in a timely manner because individual owners in a cooperative do not obtain ownership of the property, but a share in the entire project.

Paragraph (b) of § 248.175, which governs resident homeownership by limited equity cooperatives, is revised to delete the cross-reference to § 248.173(o), which requires that ownership be transferred to the tenants in a timely manner. The Department specifically requests comments on this revision.

Subpart C—Prepayment and Plans of Action Under the Emergency Low Income Preservation Act of 1987

Section 248.201 (Definitions)

As noted in the discussion of § 248.5, section 313(b)(1)(A) of title III requires the Department to provide sufficient incentives to nonprofit purchasers to meet "project oversight costs." Section 248.201 of the Department's regulations is amended by this rule to add the definition of the term "project oversight costs." The definition in § 248.201 is identical to the definition adopted in § 248.101, except that the term "nonprofit purchaser" is substituted for the term "priority purchaser," since ELIHPA does not create a category for priority purchasers. The definition of "project oversight costs" is addressed in the preceding discussion of § 248.101.

Section 248.211 (Notice of Intent To Prepay)

Section 248.211(b) of the Department's regulations is amended in order to extend the notice requirements of section 313(a) of title III to cover those who elected to proceed under ELIHPA. The preceding discussion concerning § 248.5 addresses the reasoning behind this revision. Section 248.211(b) currently requires an owner to submit a copy of its notice of intent to the governor in the State where the project is located or with the appropriate State or local government agency for the jurisdiction in which the project is located and to each tenant in the project, as well as to post a copy of the notice of intent in each occupied building of the project. The Department revises § 248.211(b) by including language from § 248.105(c), requiring, for owners who made an election, that the notice of intent be submitted to the chief executive officer of the appropriate State or local government in which the project is located, or any officer designated by executive order or State

or local law to receive such information and to the mortgagee.

Section 248.213 (Plan of Action)

The Department amends § 248.213(b) of its regulations to require owners who made an election to proceed under ELIHPA to notify the State and local governments and the tenants of the submission. The rationale behind this amendment is addressed in the preceding section concerning § 248.5. This revision incorporates in § 248.213(b), language similar to that in § 248.135(c) in order to create a uniform standard for notifying affected tenants and State and local governments under both preservation programs.

While ELIHPA does not create a mechanism for identifying tenant representatives, the LIHPRHA requirement that the tenant representative be given a copy of the plan of action is retained in case there is a tenant representative who is known to the owner. Although section 304 of title III does not extend the ban on releasing proprietary information to ELIHPA, the Department proposes to do so in this rule. There is no basis for permitting certain tenants and State and local governments to receive proprietary information and not others simply because of the preservation program chosen by the owner.

Section 248.217 (Revisions to Plan of Action)

The Department also amends § 248.217, which governs revisions to plans of action submitted under ELIHPA, to require that all revisions, and supporting information, except for proprietary information, be provided to the tenants and State and local governments. The reasons for this change are discussed in the preceding section concerning § 248.5. The language revising § 248.217 is derived from the language of § 248.135(f), as amended.

Subpart E—Technical Assistance and Capacity Building

Section 312 of title III amends LIHPRHA by adding new sections 251 through 257 which establish a technical assistance and capacity building program for providing grants to resident groups, resident councils and community-based nonprofit housing developers. This program is codified in a new subpart E which is added to part 248. Subpart E restates the provisions of sections 251 through 257. More specific information will be provided in a Notice of Fund Availability (the "1993 NOFA") which is currently being drafted by the Department. The Department intends to award technical assistance grants on a noncompetitive, rolling basis.

As enacted, LIHPRHA did not provide the Department with authority to provide funds prior to plan of action approval to priority purchasers to assist them in organizing and training. Pursuant to section 220(d) of LIHPRHA, funds could only be provided retroactively under an approved plan of action to reimburse priority purchasers for transaction expenses related to acquisition and resident councils for training expenses incurred in connection with a resident homeownership plan. However, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1992 set aside funds "for tenant and community-based nonprofit education, training and capacity building * * *." On September 3, 1992 at 57 FR 40570, the Department published a Notice of Fund Availability (the "1992 NOFA") announcing technical assistance and planning grants which would be awarded to certain priority purchasers in accordance with the standards established in the 1992 NOFA.

The Department is currently accepting applications on a rolling basis under the 1992 NOFA. In a statement on the Senate Floor, Senator Cranston remarked that "[t]he conferees expect HUD to proceed expeditiously with the [1992] NOFA and receive and approve grant applications on the 30 day schedule provided, while moving forward with the implementation of the new technical assistance program. The Department may run the programs concurrently or sequentially, but must take steps to assure that no funding gap occurs between the temporary technical assistance grant program and the permanent program established by this title." Cong. Rec. S17910 (October 8, 1992) (statement of Sen. Cranston). HUD intends to continue to accept applications under the 1992 NOFA until the funding set aside under the 1992 appropriations Act runs out. Applications for funding will be reviewed in accordance with the standards and criteria established in the 1992 NOFA and not based on the technical assistance and capacity building program set forth in subpart E. The Department intends to administer grants under the 1992 NOFA and the 1993 NOFA simultaneously.

Potential grant recipients should be aware of the substantive differences between the technical assistance program set forth in the 1992 NOFA and the program established in subpart E. Under the 1992 NOFA, funds are provided directly by HUD and are available in three separate phases; for start-up funding, for an expression of interest and development of a purchase offer, and for preparation of a plan of action. Successful applicants may receive up to $25,000 for phase I activities, $50,000 for phase II activities and $50,000 for phase III activities. Those eligible for the assistance are resident groups, resident councils, community groups, and community-based nonprofit organizations.

Pursuant to subpart E, grants are administered by intermediaries selected by HUD. Resident organizations and community-based nonprofit housing developers may apply for two types of grants: Resident capacity building and/or predevelopment. Funding for each grant may not exceed $30,000 and $200,000, respectively. In addition, State and local government agencies, nonprofit intermediaries, and experienced resident councils and community-based nonprofit organizations, may apply for grants to conduct community outreach, training programs, organization activities, and any other activities HUD deems appropriate under the preservation program.

Miscellaneous Matters

The Housing and Community Development Act of 1992 contains two additional provisions, pertaining to section 8 certificates and vouchers and flexible subsidy assistance, which also affect the preservation program. Section 141 of the Housing and Community Development Act of 1992 amends sections 8(c)(4) and 8(o)(3)(A) of the United States Housing Act of 1937 to make eligible for section 8 certificates and vouchers, tenants who have been displaced, under section 223 of LIHPRHA, as a result of a mortgage prepayment or termination of a mortgage insurance contract and nonpurchasing families residing in a project under a resident homeownership plan, pursuant to section 226 of LIHPRHA. Since their enactment, sections 223(a) and 226(b)(6)(B) of LIHPRHA provided that displaced tenants and nonpurchasing families are eligible for section 8 certificates and vouchers. However, section 8 was not amended to include these tenants and families as eligible certificate and voucher recipients. Section 141 corrects this oversight. No amendment is needed to part 248 in order to implement this provision.

Section 405(d) of the Housing and Community Development Act of 1992 amends section 201 of the Housing and Community Development Amendments

of 1978 by adding a provision stating that "[p]rojects receiving assistance under this section are not eligible for prepayment incentives under [ELIHPA] or [LIHPRHA]. Projects receiving financial assistance under such Acts are not eligible for assistance under this section." Section 405(b) of the Housing and Community Development Act of 1992 repeals section 201(k)(4) of the Housing and Community Development Amendments of 1978 and establishes new selection criteria for awarding flexible subsidy capital improvement loans, including giving priority to projects with HUD-insured mortgages over projects with HUD-held mortgages and those noninsured projects which are assisted by State agencies. Section 201(k)(4) had created a priority for projects receiving incentives under ELIHPR and LIHPRHA, but this amendment eliminates preservation projects from the list of selection criteria. On their face, these amendments would seem to preclude ELIHPA and LIHPRHA projects from receiving flexible subsidy assistance, and vice versa.

However, Congress did not amend section 224(b)(6) of ELIHPA or section 219(b)(4) of LIHPRHA which list flexible subsidy capital improvement loans as a permissible incentive. Nor did Congress repeal sections 201(m)(1) and (m)(2) of the Housing and Community Development Amendments of 1978, which discuss rental payments for ELIHPA and LIHPRHA projects receiving flexible subsidy assistance. In addition, Congress enacted section 318 of title III, requiring the Department to present a report to Congress detailing the cost of providing preservation incentives to owners of projects deemed ineligible for incentives because the owners entered into agreements to maintain the projects' low income use in exchange for flexible subsidy assistance. This report is required because Congress "is concerned that many of these projects may not be preserved, even with flexible subsidy, for lack of necessary additional funding * * * the report [should] include any recommendation which the Committee can consider for ways to make these projects eligible for the preservation program * * *" House Rpt. No. 760, 102d Cong., 2d Sess., at 117 (the "House Report"). The failure of Congress to eliminate capital improvement loans as an incentive, or to delete all flexible subsidy provisions pertaining to ELIHPA and LIHPRHA projects, and the fact that Congress is requesting a report to attempt to make projects with flexible subsidy eligible for incentives, seem to imply that Congress intended to continue to permit capital improvement loans as an incentive.

While owners proceeding under ELIHPA or LIHPRHA may finance rehabilitation with a loan insured under section 241 of the National Housing Act, a capital improvement loan is preferred by nonprofit purchasers because nonprofit mortgagors are not subject to the owner contribution requirements imposed on for-profit mortgagors, the interest rate on capital improvement loans is lower than for section 241 loans, and capital improvement loans are paid back from surplus cash. The amendment to section 241(f) made by section 316(a) of title III eliminates the need for a rehabilitation loan under LIHPRHA because rehabilitation costs will now be included in the section 241(f) equity and acquisition loans. However, capital improvement loans would be beneficial for nonprofit purchasers under ELIHPA whose only other choice is to finance improvements with a section 241(a) loan.

In light of the foregoing, the Department will allow nonprofit purchasers to obtain a flexible subsidy capital improvement loan as an incentive under ELIHPA. Because nonprofit purchasers requesting capital improvement loans in their plans of action will not be "receiving financial assistance" under ELIHPA or LIHPRHA at the time they are determined eligible for flexible subsidy, this position will not violate section 405(d) of the Housing and Community Development Act of 1992.

The Department intends to issue a Notice of Fund Availability for capital improvement loans which will announce funding for HUD-insured projects which are being sold to nonprofit purchasers pursuant to approved plans of action under ELIHPA. These projects will have to conform to the new selection criteria established in section 201(n)(1) and will be awarded assistance as their applications are received. Nonprofit purchasers of projects which do not have mortgages insured by HUD will also be eligible to apply for a capital improvements loan, but because of the statutory preference granted to projects with HUD-insured mortgages in section 201(n)(2), these projects will not be awarded funding until the end of the funding year.

Findings and Other Matters

A. Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that some of the policies in this rule will have a significant impact on the formation, maintenance and general well-being of the family. Achievement of homeownership by low income families under the regulation can be expected to support family values, by helping families to achieve security and independence, by enabling them to live in decent, safe and sanitary housing, and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

E. Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act (5 U.S.C. 601), HUD

certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it carries out statutorily-mandated limitations on prepayment of the affected mortgages. Any economic impact is a direct consequence of the statute and is not separately imposed by this rule.

F. Information Collection Requirements

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, HUD Desk Officer, room 3001, New Executive Office Building, Washington, DC 20503, for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

TABULATION OF ANNUAL REPORTING BURDEN:

Description of information collection and applicable program reference	Number of respondents	Number of responses per response	Total annual responses	Hours per response	=	Total hours
A. Resident capacity grant application 1992 statute: Section 248	221.00	1	221.00	5.00		105.00
B. Predevelopment grant application 1992 statute: Section 248	77.00	1	77.00	10.00		770.00
C. Other purpose grants 1992 statute: Section 248	50.00	1	50.00	10.00		500.00
D. Application by intermediaries 1992 statute: Section 248	50.00	1	50.00	16.00		800.00
E. Voucher submission:						
1. Resident capacity grantees: 248	221.00	10	2,210.00	0.10		221.00
2. Predevelopment grantees: 248	77.00	15	1,155.00	0.10		115.50
3. Intermediary grantees: 248	50	7	348.00	0.50		174.00
F. Reporting:						
1. Resident capacity grantees: 248	221.00	2	442.00	1.00		442.00
2. Predevelopment grantees: 248	77.00	2	154.00	1.00		154.00
3. Other purpose grantees: 248	50	2	100.00	1.00		100.00
4. Intermediary grantees: 248	50	4	200.00	3.00		600.00
G. Title II NOI to mortgages	200	1	200.00	0.1		20.00
H. Title II plan of action to tenant rep and state or local government	200	1	200.00	0.2		40.00
Total						5,041.50

G. Regulatory Agenda

This rule was listed as item 1473 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24416) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.137 (Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families).

List of Subjects

24 CFR part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR part 248

Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department amends chapter II of title 24 of the Code of Federal regulations as follows:

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

1. The authority for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b–1715z–1; 42 U.S.C. 3535(d).

2. In § 236.10, paragraph (e) is revised to read as follows:

§ 236.10 Eligible mortgagors.

* * * * *

(e) *Public mortgagors.* The public mortgagor shall be a Federal instrumentality, a State or political subdivision thereof, or an instrumentality of a State or of a political subdivision thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937 (with the exception of projects assisted or to be assisted pursuant to section 8 of such Act) and which is acceptable to the Commissioner. Such a mortgagor shall be regulated or supervised as to rents, charges and methods of operation in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this part.

3. Section 236.60 is revised to read as follows:

§ 236.60 Excess rental charges.

Except as agreed to by the Commissioner pursuant to a plan of action approved under part 248 of this chapter or in connection with an adjustment of contract rents under section 8 (c)(10) of the United States Housing Act of 1937, the mortgagor shall agree to pay monthly to the Commissioner the total of all rental charges collected in excess of the Basic Rent in accordance with instructions prescribed by the Commissioner.

4. Section 236.901 is revised to read as follows:

§ 236.901 Audit.

Where a State or local government receives interest reduction payments under section 236(b) of the National Housing Act or is the mortgagor of a mortgage insured or held by the Commissioner under this part, it shall

conduct audits in accordance with HUD audit requirements at 24 CFR part 44.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

5. The authority for part 241 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–6; 42 U.S.C. 3535(d).

6. Section 241.1060 is revised to read as follows:

§ 241.1060 Maturity.

(a) Equity loans shall have a term not to exceed 40 years; and

(b) Acquisition loans shall have a term of 40 years.

7. Section 241.1067 is revised to read as follows:

§ 241.1067 Maximum loan amount—loans insured in connection with a plan of action under subpart B of part 248 of this chapter.

(a) The amount of the equity loan shall not exceed:

(1) The amount of rehabilitation costs as determined under an approved plan of action and related charges; plus

(2) The lesser of 70 percent of the extension preservation equity of the project; or

(3) The amount the Commissioner determines can be supported by the project on the basis of an 8 percent return on extension preservation equity, assuming normal debt service coverage. To the extent practicable, equity loans shall have amortization provisions which will support the maximum loan amount authorized under this section.

(b) The amount of the acquisition loan shall not exceed:

(1) The amount of rehabilitation costs as determined under an approved plan of action and related charges; plus

(2) Ninety-five percent of the transfer preservation equity of the project; and

(3) If the purchaser is a priority purchaser, the loan may include any expenses associated with the acquisition, loan closing, and implementation of the plan of action, subject to the approval of the Commissioner.

8. A new § 241.1068 is added to read as follows:

§ 241.1068 Renegotiation of an equity loan.

The Commissioner shall renegotiate and modify the terms of an equity loan insured under this subpart at the request of the owner of the project for which a loan closing occurred if—

(a) The loan closing occurred between September 28, 1992 and January 26, 1993;

(b) The loan was made pursuant to a plan of action submitted under subpart C of part 248 of this chapter; and

(c) The plan of action was accepted by the Commissioner for processing in December 1991.

PART 248—PREPAYMENT OF LOW INCOME HOUSING MORTGAGES

9. The authority for part 248 continues to read as follows:

Authority: 12 U.S.C. 1715l note; 12 U.S.C. 4101, *et seq.*; 42 U.S.C. 3535(d).

10. In § 248.5, paragraph (d) is redesignated as paragraph (f) and new paragraphs (d) and (e) are added to read as follows:

§ 248.5 Election to proceed under subpart B or subpart C of this part.

* * * * *

(d) For an owner who has elected under paragraph (c) of this section to proceed under subpart C of this part, the Commissioner shall provide sufficient assistance to enable a nonprofit organization that has purchased, or will purchase, eligible low income housing to meet project oversight costs, as that term is defined in § 248.201.

(e) The Commissioner shall not refuse to offer incentives under § 248.231 to any owner who filed a notice of intent under § 248.211 before October 15, 1991, based solely on the date of filing of the plan action.

* * * * *

11. In § 248.101, the following definitions are added in alphabetical order to read as follows:

§ 248.101 Definitions.

* * * * *

Project oversight costs. Reasonable expenses incurred by a priority purchaser in carrying out its ongoing ownership responsibilities under an approved plan of action. Project oversight costs must be directly related to educating the priority purchaser's board of directors or otherwise supporting the board in its decision making. Project oversight costs may include staff, overhead, or third-party contract costs for:

(1) Ensuring adequate and responsible participation by the board of directors and the membership of the priority purchaser in ownership decisions, including ensuring resident input in these decisions;

(2) Facilitating long-range planning by the board of directors to ensure the physical, financial and social viability of the project for the entire time the project is maintained as low income housing; and

(3) Assisting the ownership in complying with regulatory, use, loan and grant agreements.

Proprietary information. That information which cannot be released to the public because it consists of trade secrets, confidential financial information, audits, personal financial information about partners in the ownership entity, or income data on project tenants. Where proprietary information cannot be separated from the rest of a document, the entire document shall be deemed "proprietary information" and shall not be releasable to the public. Where proprietary information can be reasonably segregated from the rest of the document, the proprietary information shall be deleted and the remainder of the document shall be releasable to the public.

* * * * *

12. Section 248.135 is amended by revising the last sentence of paragraph (c) and adding a new sentence to the end of that paragraph and by revising the last sentence of paragraph (f) to read as follows:

§ 248.135 Plans of action.

* * * * *

(c) * * * The Commissioner shall submit a copy of the plan of action to the chief executive officer of the appropriate agency of such State or local government which shall review the plan of action and advise the tenants of the project of any programs that are available to assist the tenants in carrying out the purposes of this subpart. The summary of the plan of action posted by the owner and the copies of the plan of action submitted to the tenant representative, the officer of State or local government to whom the owner submitted a notice of intent under § 248.105(c) and the chief executive officer of the appropriate State or local government, shall all state that, upon request, the tenants and the State or local government, may obtain from the owner or from the local HUD field office a copy of all documentation supporting the plan of action except for that documentation deemed "proprietary information" under § 248.101.

* * * * *

(f) * * * The owner shall submit any revision to the Commissioner, and provide a copy of the revision and all documentation supporting the revision except for that documentation deemed "proprietary information" under § 248.101, to the parties, and in the manner, specified in paragraph (c) of this section.

* * * * *

13. In § 248.141, paragraph (b) is redesignated as paragraph (e) and new paragraphs (b), (c), and (d) are added as follows:

§ 248.141 Criteria for approval of a plan of action involving prepayment and voluntary termination.

* * * * *

(b) For purposes of approving a plan of action under this section, the Commissioner shall find that the requirements of paragraph (a)(1) of this section have been met if the owner agrees to execute a use agreement which provides that rents for all tenants residing at the project at the time of plan of action approval will not exceed the limit established in paragraph (a)(1)(i) of this section and that no tenant residing in the project at the time of plan of action approval will be involuntarily displaced without good cause.

(c) For purposes of approving a plan of action under this section, the Commissioner shall find that the requirements of paragraph (a)(2) of this section have been met if the project is located in a housing market area which has been determined to have an adequate supply of decent, safe and sanitary rental housing; and it has been determined, based on the specific characteristics of the project, that the prepayment would not materially affect the housing opportunities of low and very-low income families.

(1) For purposes of this section, a "housing market area" is defined as an area where rental housing units of similar characteristics are in relative competition with each other. If a project is in a non-metropolitan area, the housing market area is the county in which the project is located. If the project is located in a metropolitan area the housing market area is the primary metropolitan statistical area (PMSA), or in the case of very large metropolitan areas, the housing market area may be a portion of the PMSA.

(2) For purposes of this section, a housing market area may be determined to have an adequate supply of decent, safe, and sanitary rental housing if the housing market area has a soft rental market. A soft rental market is a housing market area in which the supply of vacant available rental housing significantly exceeds the demand. A soft rental market exists if:

(i) There is currently a surplus of rental housing such that the current excess supply of vacant available housing, plus units currently under construction, is expected to exceed demand for at lest the next 24 months; or

(ii) Within the next 12 months, based on the housing production (units currently under construction or with firm planning commitments), in combination with the current supply of available vacant units, supply is expected to exceed demand for at least 24 months.

(3) In order to determine whether the housing market area ha a soft rental market, the Commissioner shall consider data from the 1990 Decennial Census and the most recent available local data concerning changes in population, households, employment, the housing inventory, residential construction activity, and the current and anticipated supply/demand conditions within the overall rental market, as well as the occupancy and vacancy situation in assisted housing projects in the area, including information on waiting lists and the experience of certificate and voucher holders in finding units.

(4) A determination must also be made on whether the prepayment would materially affect the housing opportunities of low and very-low income families in the area, based on the specific characteristics of the project including unit sizes, the type of tenants, e.g., elderly, handicapped, large families, minorities, the location of the project with respect to its proximity to employment opportunities; and the availability of other assisted housing within the immediate area. The prepayment would be determined to materially affect housing opportunities if:

(i) The project is needed to assist in preserving low income housing in a neighborhood which is being revitalized;

(ii) The project represents a rare source or the only source of low-and moderate-income rental housing in the immediate area;

(iii) There is a shortage of the particular type of rental housing provided by the project such as units suitable for the disabled, single room occupancy, or units for large families;

(iv) The preservation of the housing would be necessary to avoid adversely affecting the housing opportunities of low and very-low income families to find housing near employment opportunities; or

(v) The preservation of the housing would be necessary to avoid adversely affecting the housing opportunities of minorities in the community within which the housing is located.

(d) Once the Commissioner has compiled the necessary data and conducted the analysis under paragraph (c) of this section the Commissioner shall issue a written finding to the owner stating whether the plan of action to terminate the low income affordability restrictions is approved or disapproved. The written finding shall contain a specific determination of whether the market area is a soft rental market and prepayment would materially affect housing opportunities. The written finding shall include:

(1) A statement as to whether the owner has agreed to execute a use agreement to protect current tenants, in accordance with paragraph (b) of this section;

(2) A description of the geographic boundaries of the housing market area in which the project is located;

(3) An analysis of current and anticipated supply/demand conditions in both the overall rental market and the assisted housing inventory; and

(4) A discussion of whether the prepayment would materially affect the housing opportunities, given the specific characteristics of the project.

* * * * *

14. In § 248.145, the introductory text of paragraph (a) and paragraph (a)(9)(i) are revised to read as follows:

§ 248.145 Criteria for approval of a plan of action involving incentives.

(a) *Approval.* The Commissioner may approve a plan of action for extension of the low income affordability restrictions on an eligible low income housing project or for transfer of the housing to a qualified purchaser, other than a resident council acquiring the project under a resident homeownership plan, only upon a finding that—

* * * * *

(9) * * *

(i) Made by applying an annual factor, to be determined by the Commissioner, to the portion of rent attributable to operating expenses for the project, and, where the owner is a priority purchaser, to the portion of rent attributable to project oversight costs, as that term is defined in § 248.101; and

* * * * *

15. Section 248.153 is amended by revising paragraph (a)(1), redesignating the existing paragraphs (d) and (e) as (e) and (f), respectively, and adding a new paragraph (d), to read as follows:

§ 248.153 Incentives to extend low income use.

(a) * * *

(1) Receive the annual authorized return for the project as determined under § 248.121 for each year after the approval of the plan of action;

* * * * *

(d) *Rent phase-in period.* To the extent necessary to ensure that owners

receive the annual authorized return during the tenant rent phase-in period established in § 248.145(a)(6), the Commissioner shall permit owners to receive the following additional incentives:

(1) Access to residual receipts accounts;

(2) Deferred remittance of excess rent payments; and

(3) Increases in rents, as permitted under an existing Section 8 contract.

These incentives shall be provided to owners in the order listed. An owner will not be eligible to receive these additional incentives unless it can demonstrate that it is not receiving the annual authorized return. Once an owner has adequately demonstrated that it is not receiving the annual authorized return, the Commissioner will provide the owner with each incentive in turn during the rent phase-in period, until it has been determined that the owner is receiving the annual authorized return.

* * * * *

16. In § 248.157, paragraphs (m)(4), (m)(5), (m)(6), and (n) are revised, to read as follows:

§ 248.157 Voluntary sale of housing not in excess of Federal cost limit.

* * * * *

(m) * * *

(4) Meet project operating expenses and establish adequate reserves for the housing, and in the case of a priority purchaser, meet project oversight costs;

(5) Receive a distribution equal to an 8 percent annual return on any actual cash investment made to acquire or rehabilitate the project;

(6) In the case of an priority purchaser, receive reimbursement for all reasonable transaction expenses associated with the acquisition, loan closing and implementation of an approved plan of action; and

* * * * *

(n) *Incentives.* The Commissioner may provide assistance for all qualified purchasers under this subpart in the form of one or more of the incentives authorized under § 248.153. The incentives provided by the Commissioner to any qualified purchaser may include an acquisition loan under subpart E of part 241 of this chapter.

* * * * *

17. In § 248.173, paragraphs (e)(2)(i) through (e)(2)(vi) are redesignated (e)(2)(ii) through (e)(2)(vii), respectively; new paragraphs (e)(2)(i) and (g)(5) are added; and paragraph (s) is revised, to read as follows:

§ 248.173 Resident homeownership program.

* * * * *

(e) * * *

(2) * * *

(i) The debt service on the federally-assisted mortgage(s) covering the project, when such mortgage is assumed by the resident council;

* * * * *

(g) * * *

(5) All units which remain as rental units, from the date of approval of the resident homeownership program, until they are purchased by an initial owner under the resident homeownership program, shall be maintained in accordance with § 248.145 (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9).

* * * * *

(s) *Assumption of the federally assisted mortgage(s).* In connection with a resident homeownership plan, the resident council may assume a mortgage insured, held or assisted by the Commissioner under part 236 of this chapter or under part 221 of this chapter and bearing a below market interest rate as provided under § 221.518(b) of this chapter or may choose to pay off the mortgage. If the resident council decides to assume the mortgage, the project must be sold pursuant to § 248.175 and the project must be operated as a limited equity cooperative.

18. In § 248.175, paragraph (b) is revised to read as follows:

§ 248.175 Resident homeownership program—limited equity cooperative.

* * * * *

(b) The purchase of a project by a limited equity cooperative and the operation of the project by the limited equity cooperative shall be carried out in accordance with the provisions of § 248.173 (a), (b), (c), (d), (except that paragraph (d)(1)(i) of this section shall include a statement of the amount and type of incentives requested, rather than only the amount of grant funds requested), (e), (g)(3), (i) (except paragraphs (i)(1) and (3)), (m) and (n).

* * * * *

19. In § 248.201, a new definition is added in alphabetical order to read as follows:

§ 248.201 Definitions.

* * * * *

Project oversight costs. Reasonable expenses incurred by a nonprofit purchaser in carrying out its ongoing ownership responsibilities under an approved plan of action. Project oversight costs must be directly related to educating the nonprofit purchaser's board of directors or otherwise supporting the board in its decision making. Project oversight costs may include staff, overhead, or third-party contract costs for:

(1) Ensuring adequate and responsible participation by the board of directors and the membership of the nonprofit purchaser in ownership decisions, including ensuring resident input in these decisions;

(2) Facilitating long-range planning by the board of directors to ensure the physical, financial and social viability of the project for the entire time the project is maintained as low income housing; and

(3) Assisting the ownership in complying with regulatory, use, loan and grant agreements.

* * * * *

20. In § 248.211, paragraph (b) is revised to read as follows:

§ 248.211 Notice of intent to prepay.

* * * * *

(b) An owner simultaneously shall file the notice of intent with:

(1) The chief executive officer of the appropriate State or local government in which the project is located, or any officer designated by executive order or State or local law to receive such information;

(2) Each tenant in the project; and

(3) The mortgagee.

In addition, the owner shall post a copy of the notice of intent in each occupied building in the project.

* * * * *

21. In § 248.213, paragraph (a) is amended by adding to the end of the paragraph the following text to read as follows:

§ 248.213 Plan of action.

(a) * * * An owner shall submit the plan of action to the Commissioner in such form and manner as the Commissioner shall prescribe. The owner shall notify the tenants of the plan of action by posting in each occupied building a summary of the plan of action and by delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available from the tenant representatives, whose names, addresses and telephone numbers are indicated on the summary, the local HUD field office, and the on-site office for the project, or if one is not available, in the location where rents are collected, for inspection and copying, at a reasonable cost, during normal business hours. Simultaneously with the submission to the Commissioner, the owner shall submit the plan of action to that officer of State or local government to whom the owner

submitted a notice of intent under § 248.211(b). The summary of the plan of action posted by the owner and the copies of the plan of action submitted to the tenant representative and the officer of State or local government shall all state that, upon request, the tenants and the State or local government, may obtain from the owner or from the local HUD field office a copy of all documentation supporting the plan of action except for that documentation deemed "proprietary information" under § 248.101.

* * * * *

22. Section 248.217 is revised to read as follows:

§ 248.217 Revisions to plan of action.

The owner may from time to time revise the plan of action before its approval as may be necessary to obtain the commissioner's approval thereof. An owner shall submit any revision to the Commissioner, and provide a copy of the revision and all documentation supporting the revision except for that documentation deemed "proprietary information" under § 248.101, to the parties, and in the manner, specified in § 248.213(a).

PART 248—[AMENDED]

23. In part 248, a new subpart E is added to read as follows:

Subpart E—Technical Assistance and Capacity Building

Sec.

Subpart E—Technical Assistance and Capacity Building

§ 248.401 Purposes.

The purposes of this subpart are:

(a) To promote the ability of residents of eligible low income housing to participate meaningfully in the preservation process established by this part and affect decisions about the future of their housing;

(b) To promote the ability of community-based nonprofit organizations and resident councils to acquire, rehabilitate, and competently own and manage eligible housing as rental or cooperative housing for low and moderate income people; and

(c) To assist the Commissioner in discharging the obligation under § 248.157(b) to notify potential qualified purchasers of the availability of projects for sale and to otherwise facilitate the coordination and oversight of the preservation program established under this part.

§ 248.405 Grants for building resident capacity and funding predevelopment costs.

(a) *General.* Assistance made available under this subpart shall be used for direct assistance grants to resident organizations and community-based nonprofit housing developers and resident councils to assist the acquisition of specific projects (including payment of reasonable administrative expense to participating intermediaries.) Assistance made available under subpart E of this part will be distributed on a noncompetitive basis. HUD will publish a Notice in the **Federal Register** announcing the availability of assistance, as well as the application requirements and procedures and selection criteria that HUD will use in making the assistance available.

(b) *Allocation.* Thirty percent of the assistance made available under this subpart shall be used for resident capacity grants in accordance with paragraph (d) of this section. The remainder shall be used for predevelopment grants in connection with specific projects in accordance with paragraph (e) of this section.

(c) *Limitation on grant amounts.* A resident capacity grant under paragraph (d) of this section may not exceed $30,000 per project and a grant under paragraph (e) of this section for predevelopment costs may not exceed $200,000 per project, exclusive of any fees paid to a participating intermediary by the Commissioner for administering grants under this subpart.

(d) *Resident Capacity grants.* (1) *Use.* Resident capacity grants under paragraph (d) of this section shall be available to eligible applicants to cover expenses for resident outreach, incorporation of a resident organization or council, conducting democratic elections, training, leadership development, legal and other technical assistance to the board of directors, staff and members of the resident organization or council.

(2) *Eligible housing.* Grants under this paragraph (d) of this section may be provided with respect to eligible low income housing for which the owner has filed a notice of intent under subpart B or subpart C of this part.

(e) *Predevelopment grants.* (1) *Use.* Predevelopment grants under paragraph (e) of this section shall be made available to community-based nonprofit housing developers and resident councils to cover the cost of organizing a purchasing entity and pursuing an acquisition, including third party costs for training, development consulting, legal, appraisal, accounting, environmental, architectural and engineering, application fees, and sponsor's staff and overhead costs.

(2) *Eligible housing.* These grants may only be made available with respect to any eligible low income housing project for which the owner has filed a notice of intent to transfer the housing to a qualified purchaser in accordance with § 248.105 or § 248.211, or has filed a notice of intent and entered into a binding agreement to sell the housing to a resident organization or nonprofit organization.

(3) *Phase-in of grant payments.* Grant payments under paragraph (e) of this section shall be made in phases, based on performance benchmarks established by the Commissioner in consultation with intermediaries selected under § 248,415.

(f) *Grant applications.* Grant applications for assistance under paragraphs (d) and (e) of this section shall be received monthly on a rolling basis and approved or rejected on at least a quarterly basis by intermediaries selected under § 248.415(b).

(g) *Appeal.* If an application for assistance under paragraphs (d) or (e) of this section is denied, the applicant shall have the right to appeal the denial to the Commissioner and receive a binding determination within 30 days of the appeal.

§ 248.410 Grants for other purposes.

The Commissioner may provide grants under this subpart E:

(a) To resident-controlled or community-based nonprofit organizations with experience in resident education and organizing for the purpose of conducting community, city or countywide outreach and training programs to identify and organize residents of eligible low income housing; and

(b) To State and local government agencies and nonprofit intermediaries for the purpose of carrying out such activities as the Commissioner deems appropriate to further the purposes of this part.

§ 248.415 Delivery of assistance through intermediaries.

(a) *General.* The Commissioner shall approve and disburse assistance under § 248.405 and § 248.410 through eligible intermediaries selected by the Commissioner under paragraph (b) of this section. If the Commissioner does not receive an acceptable proposal from

an intermediary offering to administer assistance under this section in a given State, the Commissioner shall administer the program in such State directly.

(b) *Selection of eligible intermediaries.* (1) *In General.* The Commission shall invite applications from and shall select eligible intermediaries to administer assistance under subpart E of this part through Notices of Funding Availability published in the **Federal Register.** The process shall include provision for a reasonable administrative fee.

(2) *Priority.* With respect to all forms of grants available under § 248.405, the criteria for selecting eligible intermediaries shall give priority to applications from eligible intermediaries with demonstrated expertise under subpart B or subpart C of this part.

(3) *Criteria.* The criteria developed under this section shall:

(i) Not assign any preference or priority to applications from eligible intermediaries based on their previous participation in administering or receiving Federal grants or loans (but may exclude applicants who have failed to perform under prior contracts of a similar nature);

(ii) Require an applicant to prepare a proposal that demonstrates adequate staffing, qualifications, prior experience, and a plan for participation; and

(iii) Permit an applicant to serve as the administrator of assistance made available under § 248.405(d) and (e), based on the applicant's suitability and interest.

(4) *Geographic coverage.* The Commissioner may select more than one State or regional intermediary for a single State or region. The number of intermediaries chosen for each State or region may be based on the number of eligible low income housing projects in the State or region, provided there is no duplication of geographic coverage by intermediaries in the administration of the direct assistance grant program.

(5) *National nonprofit intermediaries.* National nonprofit intermediaries shall be selected to administer the assistance made available under § 248.405 only with respect to State or regions for which no other eligible intermediary, acceptable to the Commissioner, has submitted a proposal to participate.

(6) *Preference.* With respect to assistance made available under § 248.410, preference shall be given to eligible regional, State and local intermediaries, over national nonprofit organizations.

(c) *Conflicts of interest.* Eligible intermediaries selected under paragraph (b) of this section to disburse assistance under § 248.405 shall certify that they will serve only as delegated program administrators, charged with the resposibility for reviewing and approving grant applications on behalf of the Commissioner. Selected intermediaries shall:

(1) Establish appropriate procedures for grant administration and fiscal management, pursuant to standards established by the Commissioner; and

(2) Receive a reasonable administrative fee, except that they may not provide other services to grant recipients with respect to projects that are the subject of the grant application and may not receive payment, directly or indirectly, from the proceeds of grants they have approved.

§ 248.420 Definitions.

Community-based nonprofit housing developer means a nonprofit community development corporation that:

(1) Has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(2) Has been in existence for at least two years prior to the date of the grant application;

(3) Has a record of service to low and moderate income people in the community in which the project is located;

(4) Is organized at the neighborhood, city, county, or multi-county level; and

(5) In the case of a corporation acquiring eligible low income housing under subpart B of this part, agrees to form a purchaser entity that conforms to the definition of a community-based nonprofit organization under such subpart and agrees to use its best efforts to secure majority tenant consent to the acquisition of the project for which grant assistance is requested.

Eligible intermediaries. For purposes of this subpart, the term "eligible intermediary" means a State, regional, or national nonprofit organization (including a quasi-public organization) or a State or local housing agency that:

(1) Has as a central purpose the preservation of existing affordable housing and the prevention of displacement;

(2) Does not receive direct Federal appropriations for operating support;

(3) In the case of a national nonprofit organization, has been in existence for at least five years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(4) In the case of a regional or State nonprofit organization, has been in existence for at least three years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 or is otherwise a tax-exempt entity;

(5) Has a record of service to low income individuals or community-based nonprofit housing development in multiple communities and, with respect to intermediaries administering assistance under § 248.405, has experience with the allocation or administration of grant or loan funds; and

(6) Meets standards of fiscal responsibility established by the Commissioner.

Dated: June 30, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-93-3637; FR-3473-N-01]

Funding Proposal for Intermediaries for Administering Preservation Technical Assistance Grants, Outreach and Training Grants, and Other Preservation Activity Grants

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice soliciting comments on funding proposal.

SUMMARY: This notice solicits comments on a funding mechanism that will subsequently be issued for effect for the Department's Preservation program. The Department is taking this unusual step of inviting comments on a funding methodology because of the complexity of the program and the use of intermediaries as a funding conduit. In addition, the Department is publishing today a rule addressing new statutory requirements for the program, which were considered in developing this methodology. Based on comments received on this notice, the Department expects to issue the actual Notice of Funding Availability (NOFA) later this summer. Only at that time should applicants complete and submit applications for the funding as announced in that NOFA.

The following items summarize the program as it is proposed for funding in this document:

- The program is intended to promote the ability of residents of eligible low-income housing to participate meaningfully in the preservation process established by the Emergency Low Income Housing Preservation Act of 1989 (ELIHPA) and the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA), and to promote the ability of community-based nonprofit housing developers (CBDs) and resident councils (RCs) to acquire, rehabilitate, and own and manage competently eligible housing as rental or homeownership property for low- and moderate-income residents.
- The funding component of the program, as would be established in the NOFA to be issued later, would assist the Secretary in discharging his obligation to notify qualified purchasers of the availability of properties for sale, and would otherwise facilitate the coordination and oversight of the Preservation program.
- As is done in this document, the subsequent NOFA would describe the direct grants that would be made available through intermediaries; however, the Department would not solicit for applications for those direct grants through the NOFA.
- Remaining funds from the Preservation Technical Assistance NOFA published September 3, 1992, would also be made available through the intermediaries under the provisions of the NOFA.
- Funds would be made available to and through eligible intermediaries through a competitive selection process. Local, State, regional, and national intermediaries may apply to administer direct assistance grants. Eligible intermediaries would also be permitted to apply to administer Other Preservation Grants, which would fall into two categories: First, Outreach and Training Grants (to conduct community, city- or county-wide outreach to identify, organize, and deliver training to residents of eligible low-income housing); second, Preservation Activities Grants (to perform activities that further the preservation program in the intermediary's jurisdiction).
- Intermediaries administering grants would receive processing fees, which will be funded from the available grant funds. Dollar amounts would be made available by State, utilizing the Department's estimate of Preservation activity.
- In the body of the NOFA would be information concerning eligible intermediary applicants, the funding available by State, HUD's processing of the intermediary applications, grant applicants eligible for direct assistance, as well as the selection criteria with the intermediary applicants and direct assistance grant applicants.
- Direct assistance applicants should be aware that the determination of which regulatory requirements apply to an acquisition would depend on the preservation program under which the owner has filed a Notice of Intent. Thus applicants must comply with 24 CFR part 248 and with either ELIHPA or LIHPRHA, as appropriate. (Applicants should note that an Interim Rule revising 24 CFR part 248 as published in the **Federal Register** on April 8, 1992 (57 FR 11992).) Subsequent revisions to 24 CFR part 248 were published on December 3, 1992 (57 FR 57312), and on January 15, 1993 (58 FR 4870), with additional published elsewhere in this issue of the **Federal Register** to reflect new requirements of the Housing and Community Development Act of 1992.

DATES: Comment due date: August 27, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comment are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Director, Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-2300. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300. (Except for the TDD number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Department is publishing the following text solely for the purpose of permitting interested persons to comment on the methodology proposed for distributing the funds available for the indicated activities. The Department is taking this unusual step of inviting comments on a funding methodology because of the complexity of the program and the use of intermediaries as a funding conduit. In addition, the Department expects to publish a rule soon addressing new statutory requirements for the program, which were considered in developing this methodology.

Potential Applicants Should not Complete or Submit Applications Based on This Notice. A Notice of Funding Availability (NOFA) will be prepared later this summer, after considering comments submitted in response to this notice. Potential applicants should wait until final procedures are announced in the subsequent NOFA before devoting resources to the application process.

I. Text of Document on Which Comments Are Invited (Do Not Submit Applications)

A. Authority and Background

The funding that will be made available under a subsequent NOFA is authorized by section 312 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) in order to provide

assistance to resident groups and CBDs involved in projects proceeding under the provisions of the Emergency Low-Income Housing Preservation Act of 1987 (Pub. L. 100–242, section 201 of the Housing and Community Development Act of 1987, approved Feb. 5, 1988) (ELIHPA) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101–625, section 601 of the National Affordable Housing Act (NAHA), approved November 28, 1990) (LIHPRHA).

The origins of LIHPRHA are in ELIHPA. The purpose of ELIHPA was to preserve low-income affordability restrictions on certain HUD-insured or assisted multifamily projects. ELIHPA authorized the use of incentives to encourage owners to retain low-income affordability restrictions or to transfer the property to purchasers who would agree to retain those restrictions. The fundamental principles underlying ELIHPA were that the low-income housing should be preserved for the intended beneficiaries and that owners should be guaranteed a fair and reasonable return on their investments.

ELIHPA was intended to be a temporary measure that would allow Congress time to fashion a permanent program for the preservation of existing low-income housing projects. This permanent program is LIHPRHA, which replaced ELIHPA except to the extent that section 604 of NAHA provides a transition option for certain owners. In addition, section 226 of LIHPRHA establishes the Resident Homeownership Program, under which tenants may become homeowners of eligible low income housing. The Department's regulations implementing these statutory provisions were published as an Interim Rule amending 24 CFR part 248 (57 FR 11992, April 8, 1992), and were revised on December 3, 1992 (57 FR 57312) and January 15, 1993 (58 FR 4870). Additional revisions addressing new requirements of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act) are included in a rule published elsewhere in today's **Federal Register**. All references in this NOFA to §§ 248.1 through 248.183 would be to those sections as set out in the subsequent revisions.

(Most requirements under this NOFA were imposed by title III of the Housing and Community Development Act of 1992 and included in the revision to 24 CFR part 248, published elsewhere in today's **Federal Register**.)

B. Request for Applications

Eligible intermediaries would be invited to apply to administer funds under the provisions of this NOFA. Selected intermediaries would be required to announce the availability of direct grant funds and administer those grant programs as described in Sections II and III below.

C. Allocation of Amounts

The purpose of the subsequent NOFA would be to make available $25 million in funds to and through intermediaries for eligible resident and community organizations and for other eligible applicants to perform outreach, training, and other preservation activities. The dollar amounts will be made available on a State-by-State basis for each grant category (categories are listed in parts 1 and 2 of this paragraph). Available amounts are listed at the end of this NOFA. The Department will rate regional and State intermediary applications together. If no intermediary applicant applies to administer grants in a particular State, the Department may select a national nonprofit organization to perform those activities in that State.

A successful intermediary applying to administer grants for FY 1993 funds will also be responsible for administering grant funds made available through FY 1994 appropriations, if any. The 1992 Act authorized up to $25 million in additional funds for this purpose for FY 1994. In addition, the Preservation Technical Assistance Grant program that is currently being administered by the Department will be terminated at intermediary selection, and additional unreserved funds from that NOFA will be made available through the intermediaries. The intermediaries will receive a start-up fee appropriate to the scope of activities proposed and the number of States for which it will administer grant activities, and will receive an additional fee of up to two percent of the money allocated for the jurisdiction overseen. The start-up fee will be proposed by the intermediary in its response to the NOFA and will be negotiated between the Department and the intermediary. Total fees are based on the intermediary performing the following activities: announcing the availability of grant funds; producing and distributing application kits; accepting, reviewing and approving grant applications; executing grant agreements; disbursing grant funds; monitoring the grantees' activities under the grant award; and maintaining documentation of grant activities for the Department's monitoring of the intermediary.

1. Direct Assistance Grants

The two forms of direct assistance grants that will be made available through intermediaries are Resident Capacity Grants and Predevelopment Grants. These are described in Sections II.A. and II.C. below. Of the $25 million available from FY 1993 appropriations, $22.5 million would be made available for these grants. Of that amount, $6.75 million would be available for Resident Capacity Grants, and $15.75 million would be available for Predevelopment Grants. Of any additional funds made available under this program, 90 percent will be set aside for Direct Assistance Grants, and, of that, 30 percent will be set aside for Resident Capacity Grants and 70 percent for Predevelopment Grants. The dollar amounts available directly to the resident and community organizations shall be limited to $30,000 for Resident Capacity Grants and $200,000 for Predevelopment Grants. The Predevelopment grants will be funded in at least two phases; the performance benchmarks for these phases will be negotiated between the Department and selected intermediaries prior to direct assistance application submission.

2. Other Purpose Grants

The two forms of Other Purpose Grants that will be made available through intermediaries are Outreach and Training Grants and Preservation Activities Grants. Of the $25 million available from FY 1993 appropriations, $2.5 million is being made available for these grants. Of any additional funds made available under this program, 10 percent will be set aside for Other Purpose Grants. Outreach and Training Grants will be available for resident-controlled or community-based nonprofit organizations with experience in resident education and organizing, to identify and organize residents of eligible low-income housing. Preservation Activities Grants will be made available to State and local government agencies and nonprofit intermediaries for the purpose of carrying out activities that further the preservation program in their jurisdiction. Other Purpose Grant funds will be made available by the intermediary on a competitive basis as funds become available.

C. Eligibility

1. Tasks

Intermediaries may apply for any and all parts of the intermediary tasks described in this NOFA. The three distinct tasks are:

- Administering resident capacity grants;
- Administering predevelopment grants;
- Administering other purpose grants.

Through its application, an intermediary must describe the specific jurisdiction in which it proposes to perform such tasks. States may be subdivided for purposes of the NOFA activities based on the number of eligible low-income housing projects in the State, provided there is no duplication of geographic coverage for any administrative task. Specific intermediary tasks will include the following:

- Advertising fund availability for the jurisdiction overseen.
- Producing and distributing grant application kits (a sample kit will be provided by the Department).
- Accepting grant applications.
- Reviewing and approving grant applications.
- Vouchering for funds through the Department.
- Disbursing grant funds.
- Monitoring activities under the grant, including compliance under the grant agreement.
- Reporting to the Department at least quarterly on the status of applications and grants.
- Maintaining grant documentation for HUD monitoring and/or audits.

2. Eligible Intermediaries

(a) General definition. An eligible intermediary applicant is a State, regional, or national nonprofit of quasi-public organization, or a State or local housing agency that has as a central purpose of its organization the preservation of low-income housing and the prevention of displacement of low and moderate income residents. An eligible intermediary must not receive direct Federal appropriations for operating support. All intermediaries must have a record of service to low-income individuals or community-based nonprofit housing developers in multiple communities and meet the standards of fiscal responsibilities established in OMB Circular A–110 and A–122 or, if a State or local agency, 24 CFR 85. In addition, intermediaries must have experience with the allocation or administration of grant or loan funds.

(b) Applicant categories. (i) *A national nonprofit applicant* must also have been in existence for at least five years and be classified as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986.

(ii) *A regional or State nonprofit applicant* must also have been in existence for at least three years and be classified as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 or be otherwise a tax-exempt entity.

(iii) *A State or local agency.*

3. Ineligible Intermediary Activities

Examples of activities that are not eligible to be funded to intermediary grantees include:

- Activities not directly related to the tasks listed in Section I.C(1) of this NOFA;
- Activities funded through the grants the intermediary is administering;
- Entertainment, including associated costs such as food and beverages;
- Payments of fees for lobbying services;
- Activities funded from other sources; and
- Activities completed prior to the date funding is approved under this NOFA.

D. Selection Criteria

1. Threshold

Intermediary grantees must meet minimum criteria described in Section I.C(2), above. If, in its review, the Department determines that the applicant does not meet the threshold criteria, the application will be rejected. If the application does meet the threshold criteria, then the Department will select grantees through a rating and ranking competition described in Section I.D(2), below.

2. Preferences and Factors for Award

The intermediary applications would be rated and ranked on a point system with the maximum point score of 100. The Department would first rate and rank all State, local, and regional applications submitted. The Department will then rate and rank all national intermediary applications to select an intermediary for States or regions for which no other eligible intermediary, acceptable to the Secretary, has submitted a proposal to participate. If no national intermediary applies to perform NOFA activities, the Department will administer direct assistance grant funds for all areas without an acceptable intermediary. The points will be allocated based on the categories below:

(a) *Preservation experience.* (25 points) The Secretary shall give priority to applications from eligible intermediaries with demonstrated expertise or experience with ELIHPA and LIHPRHA.

(b) *Range of activities.* (25 points) Preference points will be given to intermediaries proposing to do all tasks described in this NOFA: administering Resident Capacity Grants; administering Predevelopment Grants; and administering Other Purpose Grants. Preference will also be given to organizations applying to administer both the Resident Capacity Grants and the Predevelopment Grants over an intermediary applying to administer just one of those grant programs. The Department will consider joint venture applications as long as one eligible intermediary is identified in the application as the primary applicant.

(c) *Direct experience.* (25 points) Preference will be given to intermediaries who have direct experience performing the tasks for which they have applied. This would include administration of grants to resident organizations, administration of grants to nonprofit organizations and/or State or local agencies, and monitoring of nonprofit grantees.

(d) *Organizational capacity.* (25 points) Priority will be given to an applicant that submits evidence that the organization can implement the proposed activities in the most efficient manner, based on demonstrated organizational capacity and staff expertise.

II. Direct Assistance Applications

A. Definitions

(1) General Definition

An eligible applicant must inform residents of all occupied units that they are applying for a grant. An eligible applicant is one of the following entities that complies with the following applicable criteria:

(a) Resident group. For an applicant to be considered a resident group the following must be submitted:

(i) Evidence that adult residents of the greater of 5% of the occupied units or 10 units of the subject property are members;

(ii) A copy of a notice announcing an organizational meeting to discuss resident participation in decisions affecting the project;

(iii) A copy of the agenda of the organizational meeting referred to in item (ii) of this paragraph; and

(iv) A list of attendees of the organizational meeting referred to in item (ii) of this paragraph.

(b) Resident Council. For an applicant to be considered an RC, it must meet the definition of "resident council" as set out in § 248.101.

(c) Community Based Nonprofit Housing Developer. For an applicant to be considered a CBD it must submit evidence that it:

(i) Is classified as tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Has been in existence for at least 2 years prior to the date of grant application;

(iii) Has a record of service to low- and moderate-income people in the community in which the project is located;

(iv) Is organized at the neighborhood, city, county, or a multi-county level;

(v) In the case of an organization seeking to acquire eligible housing under LIHPRHA, agrees to form a purchasing entity that conforms to the definition of a community-based non-profit organization (CBO) in 24 CFR 248.101;

(vi) Agrees to use its best efforts to secure majority tenant consent if the organization seeks to acquire the project for which grant assistance is requested; and

(vii) Certifies that its organization does not violate the regulatory definition of a Related Party as set forth in 24 CFR 248.101, and that no individual with a conflict of interest with the owner entity will receive grant funds.

(2) Resident Capacity Grant Applicants

Resident Capacity applicants must meet the criteria listed in Section II.A(1) of this NOFA. In addition, these grants may be made only with respect to eligible low-income housing, as defined in 24 CFR 248.101, for which the owner has filed a Notice of Intent under ELIHPA or an Initial Notice of Intent under LIHPRHA.

(3) Predevelopment Grant Applicants

Predevelopment Grant applicants must be RCs or CBDs meeting the criteria listed in Section II.A.(1) of this NOFA. These grants may be made only with respect to eligible low-income housing projects for which the owner has filed an initial or second Notice of Intent to transfer the housing to a qualified purchaser under LIHPRHA, or has filed any Notice of Intent under LIHPRHA or ELIHPA and the owner has entered into a binding agreement to sell the housing to the applicant organization. In addition, these grants may be made only to organizations seeking to purchase the property with a majority of resident support for the purchase.

B. Ineligible Direct Assistance Applicants

(1) Entities that have applications pending for funds under any of the HOPE 2 grants are not eligible to apply for funding under this NOFA (because the owner would have already elected to proceed under the distinct requirements applicable to HOPE 2 grants, and is precluded from concurrently filing the prerequisite Notice of Intent under LIHPRHA or ELIHPA). An entity that had been selected for HOPE 2 funding is ineligible to apply for a grant under this NOFA until notified by the administering HUD Field Office that the HOPE grant has been terminated due to the owner's filing of a Notice of Intent under ELIHPA or LIHPRHA.

(2) Entities that have been awarded grants under the Preservation NOFA issued September 3, 1992 (57 FR 40570), entitled Technical Assistance Grants for Resident Groups, Community Groups, and Community-Based Nonprofit Organizations and Resident Councils, may not receive funds made available with respect to any projects for which those grants were funded under this NOFA for technical assistance until all funds awarded to the grantee under the 1992 NOFA have been expended. The total grant award from the September 3, 1992 NOFA and this NOFA may not exceed the funding limits of this NOFA.

C. Eligible Direct Assistance Grant Activities

(1) Resident Capacity Grants

Resident Capacity Grants may be used to cover expenses for the following activities:

- Resident outreach;
- Legal services to incorporate the resident organization or RC, establish a board or directors, write by-laws, or establish non-profit status;
- Accounting services for budgeting, planning, and creation of accounting systems that are in compliance with OMB Circular A–110 or A–122;
- Conducting resident meetings and democratic elections;
- Training residents and developing resident leadership;
- Other technical assistance related to developing the capacity of the residents of the organization to meaningfully participate in decisions related to the project.

(2) Predevelopment Grants

Predevelopment Grants may be used to cover consultant costs, and grantee staff and overhead costs related to the following activities:

- Legal services to organize a purchasing entity;
- Accounting services for budgeting, planning, and creation of accounting systems that are in compliance with OMB Circular A–110 or A–122;
- Preparing bona fide offers including contracts and other documents to purchase the property;
- Training residents, resident council staff and board members in skills related to the operation and management of the project;
- Developing and negotiating management contracts, related contract monitoring, and management procedures;
- Engineering studies, such as site, water, and soil analysis, mechanical inspections; and estimations of the cost of rehabilitation and of meeting local building and zoning codes, in anticipation of purchasing a property, as necessary to supplement the capital needs assessment developed by HUD (see the Final Guidelines for Determining Appraisals of Preservation Value Under LIHPRHA, 57 FR 19970 (May 8, 1992));
- Securing financing and preparation of mortgage documents, transfer documents, and other documentation incident to closing a purchase offer;
- Preparing market studies and management plans; and
- Other activities related to promoting the ability of eligible applicants to acquire, rehabilitate and competently own and manage eligible housing.

D. Ineligible Grant Activities

Examples of activities that are not eligible to be funded to direct assistance applicants include:

- Earnest money deposits as part of a purchase offer made under 24 CFR 248.157, 248.161, 248.173, and 248.175;
- Purchase of land or buildings or any improvements to land or buildings;
- Activities not directly related to the eligible activities listed in Section II.C of this NOFA;
- Entertainment, including associated costs such as food and beverages;
- Payments of fees for lobbying services;
- Activities funded from other sources;
- Activities completed prior to the date funding is approved under this NOFA;
- Activities completed subsequent to approval of a Plan of Action; and
- Activities performed by the administering intermediary.

E. Timeframes

Direct assistance applications will be made to the intermediaries on an ongoing basis and, if acceptable, must be approved no later than 30 days after a complete application is received by the intermediary. If the application is found to be technically complete (i.e., there are no missing exhibits), but substantively deficient (i.e., an exhibit does not adequately meet the

application requirements), the intermediary shall return the application with a deficiency letter and allow 14 days for resubmission of deficient exhibits. The intermediary will have an additional 30 days to review and approve an application, following receipt of application revisions.

F. Direct Assistance Grant Selection Criteria

(1) Resident Capacity Grants

(a) All Resident Capacity Grant applicants will receive an application kit, which will be produced and distributed by the intermediary. A sample application kit will be provided to the intermediaries from the Department. Intermediaries must review and approve or reject applications for Resident Capacity Grants based on the threshold criteria listed in paragraph (1)(b), below. Applications will be accepted on an ongoing basis and all acceptable applications will be approved unless there are no funds available for Resident Capacity Grants.

(b) Threshold requirements. The following are threshold requirements for resident capacity grants:

(i) The applicant meets the eligible applicant criteria listed in Sections II.A (1) and (2) of this NOFA.

(ii) The applicant is applying for eligible activities listed in Section II.C(1) of this NOFA.

(iii) The plan for promoting the ability of residents to meaningfully participate in the preservation process is reasonable and feasible.

(iv) The budget submitted with the application reflects reasonable costs directly associated with the grant activities.

(v) The estimate of time necessary to achieve completion of activities and delivery of products is reasonable and realistic and within the time frames set forth in the applicable program regulation.

(2) Predevelopment Grants

(a) All Predevelopment Grant applicants will receive an application kit which will have been produced and distributed by the intermediary. A sample application kit will be provided to the intermediaries from the Department. Intermediaries must review and approve or reject applications for Predevelopment Grants based on the threshold criteria listed in paragraph (2)(b), below. Applications will be accepted on an ongoing basis and all acceptable applications will be approved unless there are no funds available for Predevelopment Grants.

(b) Threshold requirements. The following are threshold requirements for predevelopment grants:

(i) The applicant meets the eligible applicant criteria listed in Sections II.A. (1) and (3) of this NOFA;

(ii) The applicant is applying for eligible activities listed in Section II.C(2) of this NOFA;

(iii) The plan for promoting and achieving a resident supported purchase of the property must be reasonable and feasible, and in conformance with the appropriate program regulations and guidelines;

(iv) The budget submitted with the application reflects reasonable costs directly associated with the grant activities that would result in the development of a feasible purchase; and

(v) The estimate of time necessary to achieve completion of activities and delivery of products is reasonable and realistic and within the time frames set forth in the applicable program regulation.

(3) Competing Grant Applications

If more than one approvable direct assistance grant application is received for the same project, the grant shall be awarded to the applicant with the most resident support. In addition, if there is an indication that a majority of the residents oppose the applicant's selection, that application shall be denied.

(4) Appeals

If an application for either a Resident Capacity Grant or a Predevelopment Grant is denied, the applicant will have the right to appeal that denial to the Department. The appeal must be made within 30 days of application rejection, and the Department will make a binding determination within 30 days of the appeal.

III. Other Purpose Grant Applications

A. General

Other Purpose Grants are meant to fund activities by nonprofits and State and local agencies which will further the Preservation process. All Other Purpose Grant applications, including Outreach and Training applications and Preservation Activity Grant applications, will be reviewed together and selected on a competitive basis by the administering intermediary. These grants will be made available out of the total amount of Other Purpose Grant funds allocated for an intermediary's jurisdiction. Grants will be selected based on eligibility thresholds, applicant capacity and jurisdictional needs as described below.

B. Eligible Applicants for Resident Outreach and Training

An organization applying to do resident outreach and training must demonstrate that it is a nonprofit organization, has experience in resident education and organizing, and that it is either resident controlled with a majority of the board consisting of residents of subsidized housing or that it is community-based with a majority of its activities taking place at the community level.

C. Eligible Activities for Outreach and Training Grants

Outreach and Training Grants are available for the following activities:

- Identifying residents and resident groups in preservation projects that are eligible and could be made available for sale.
- Performing outreach to residents and resident groups in preservation projects that are eligible and could be made available for sale.
- Delivering project-based, community-, city-, or county-wide training programs on ELIHPA, LIHPRHA, and resident participation and purchase, including homeownership.

D. Eligible Applicants for Preservation Activity Grants

An organization applying for Preservation Activity Grant funds must be an eligible intermediary as defined in Section I.C(2) of this NOFA. However, that applicant must not be the same intermediary as the intermediary selected to administer grant funds in that jurisdiction.

E. Eligible Activities for Preservation Activity Grants

Preservation Activity Grants will be available to any eligible applicant for purposes of streamlining the Preservation process, educating parties outside of the Department on the Preservation process, or otherwise furthering the Preservation program established in ELIHPA and LIHPRHA. Administering intermediaries may award Preservation Activity Grants for the following types of activities:

- Educating outside parties including but not limited to appraisers, financial institution officials, state and local government officials, community groups, and owner entities on the preservation process;
- Pilot programs that assist HUD field staff to expedite the Preservation process or otherwise conserve staff resources;
- Establishment of Preservation clearinghouses as a resource to resident

organizations, community groups and potential Project purchasers;

• Other model initiatives which further the intent of ELIHPA and/or LIHPRHA.

F. Ineligible Activities for Other Purpose Grants

Examples of activities that are not eligible to be funded for Other Purpose Grant applicants include:

• Purchase of land or buildings or any improvements to land or buildings;

• Entertainment, including associated costs such as food and beverages;

• Payments of fees for lobbying services;

• Activities funded from other sources;

• Activities already being performed outside the scope of this NOFA;

• Activities completed prior to the date funding is approved under this NOFA; and

• Activities performed by the administering intermediary.

G. Timeframes

Other Purpose Grants will be awarded by the administering intermediaries on a competitive basis each time funds become available for this purpose. After the advertising of funding availability, the intermediary will accept applications until a specified closing date. The closing date for the first group of applications must be no less than 90 days from the time the administering intermediary is accepted. Applications will be reviewed, rated and ranked by the intermediary, and grants must be awarded no later than 45 days after the closing date of the competition. If the application is found to be deficient in a non-substantive manner, the intermediary will contact the applicant within 15 days of the closing date of the competition and the applicant will have 15 days to submit additional information. Non-substantive deficiencies are those which are not integral to the application's review, such as a certification.

H. Other Purpose Grant Selection Criteria

(1) General

All Other Purpose Grant applicants will receive an application kit, which will be produced and distributed by the intermediary. A sample application kit will be provided to the intermediaries from the Department. Applications must be received by the administering intermediary by close of business on the last day of the competition, as advertised by the intermediary. Intermediaries will perform a threshold review of the application to check for completeness and contact the applicant to correct any non-substantive deficiencies as defined in Section III.G, above.

(2) Factors for Award

Once the intermediary determines that the applicant is eligible for the type of grant applied for, as specified in Sections III.B and III.D, above and is applying for eligible activities as specified in Sections III.C and III.E, above, the intermediary will rate and rank the applications giving preferences based on the categories below:

(a) Preservation experience. The intermediary shall give priority to applicants with demonstrated expertise or experience with ELIHPA and LIHPRHA.

(b) Direct experience. Preference will be given to applicants who have direct experience performing the tasks for which they have applied. For Outreach and Training grants this would include tenant organizing and conducting educational workshops. For Preservation Activity grants this could include training or other activities directly related to the type of activity proposed in the grant application.

(c) Organizational capacity. Priority will be given to an applicant that submits evidence that the organization can implement the proposed activities in an efficient manner, based on demonstrated organizational capacity and staff expertise.

(d) Jurisdictional needs. This criteria will be based on a determination made by the intermediary and approved by the Department to address specific unmet needs of the jurisdiction overseen by the administering intermediary. In making a determination of jurisdictional needs, prior to the application period, the intermediary and the Department will assess current preservation activities and problems in the jurisdiction. This assessment will include availability of Department-sponsored or other training for residents and other groups, the capacity of local HUD field offices, and other preservation resources available to interested parties outside of the Department.

IV. Intermediary Application Process

A. Obtaining Intermediary Applications

(This information will be specified in the NOFA, to be published after comments on this notice document are received and analyzed.)

B. Submitting Applications

(Information on submitting applications will be included in the NOFA, when it is published for effect.)

C. Submission Requirements

An intermediary applicant would be required to provide the following:

(1) A completed application, including the following, as applicable:

(a) OMB Standard form 424;

(b) Summary of proposed activities and jurisdiction;

(c) Information about the applicant, including its history, its staff and qualifications, and its experience;

(d) Summary of plan to advertise grant availability, review applications, disburse funds, and monitor activities under the grant;

(e) Evidence of tax-exempt status, if applicable;

(f) Certification that the intermediary will not receive payment, directly or indirectly, from the proceeds of the grants they have approved;

(g) Certification that assistance provided under this NOFA will not be used to supplant or duplicate other resources for the proposed activities. For purposes of this paragraph, "other resources" means resources provided from any source other than under this NOFA;

(h) Other disclosures, certifications, and assurances (including Drug-Free Workplace certification), as required under the law and this NOFA; and

(i) Other information and materials as may be described in the application kit.

D. Intermediary Selection Process

The selection process for intermediaries would consist of a threshold screening to determine whether the application meets the technical requirements for application submission contained in this NOFA and the application kit. If the application meets the technical requirements, it will be reviewed and ranked by the Preservation Division in Headquarters according to the selection criteria in Section I.D of this NOFA. Within 60 days from the application deadline, the Preservation Division would notify an intermediary applicant of its selection or rejection. Applicants will be required to sign a grant agreement. If no intermediary is selected for a particular state, the HUD field offices will directly administer the grants.

E. Corrections to Deficient Applications

If an intermediary application is found to be deficient in a nonsubstantive manner, the Department will inform the applicant of such deficiency within 15 days after the

application deadline and the applicant will have seven days to submit revisions to its application. Non-substantive deficiencies are those which are not integral to the application's review, such as a certification. If an application is substantively deficient at the time of application deadline, the application will be rejected.

F. Application Selection Timeframe

The Department will complete its review and selection process within 60 days of the application deadline date. Once intermediary grants are awarded and grant agreements are executed, intermediaries administering direct assistance grants will have 30 days to make available those grants to eligible direct assistance applicants listed in Section II.A of this NOFA. Applications from direct assistance applicants will be accepted on a rolling basis by the intermediaries administering the grants. Intermediaries selected to administer Other Purpose Grants must make application kits available within 45 days of intermediary selection and allow up to 60 days for Other Purpose Grant applicants to submit proposals.

G. Intermediary Information

Eligible Direct Assistance applicants and other interested parties could request information regarding the administering intermediary in a specific State or region after [date to be specified when NOFA is published for effect] through the Preservation Division at HUD, whose address is listed above.

IV. Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this notice relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, this notice merely invites comments on the process the Department proposes to use to select intermediaries that will administer direct assistance grants to eligible recipients. The grants to eligible recipients would be for technical assistance activities related to the preservation of low-income housing.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this notice, as those policies and programs relate to family concerns.

Section 103 HUD Reform Act

HUD's regulation implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, would apply to the funding competition announced in a subsequent NOFA to be based on this notice. The requirements of the rule continue to apply until the announcement of selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under the provisions of this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 4101 *et seq.*; 42 U S.C. 3535(d).

Dated: June 30, 1993.

Nicholas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix:

The allocation of funds by State will be determined according to the level of activity in that State as of the closing date by which interested persons must submit applications to be Intermediaries. If additional grant funds are made available, the State allocations will be revised according to the activity levels at the time the new funding is made available. The total funds available will be divided according to the number of active Notices of Intent plus the number of Plans of Action submitted for the State. The following is a list of activity level by State as of April 30, 1993:

Alabama: 3
Alaska: 2
Arizona: 2
Arkansas: 8
California: 149
Colorado: 5
Connecticut: 5
Delaware: 0
District of Columbia: 1
Florida: 3
Georgia: 6
Hawaii: 6
Idaho: 17
Illinois: 12
Indiana: 31
Iowa: 10
Kansas: 0
Kentucky: 5
Louisiana: 6
Maine: 1
Maryland: 16
Massachusetts: 35
Michigan: 12
Minnesota: 9
Mississippi: 10
Missouri: 4
Montana: 7
Nebraska: 9
Nevada: 2
New Hampshire: 4
New Jersey: 11
New Mexico: 0
New York: 12
North Carolina: 7
North Dakota: 3
Ohio: 2
Oklahoma: 0
Oregon: 37
Pennsylvania: 8
Puerto Rico: 6
Rhode Island: 8
South Carolina: 2
South Dakota: 2
Tennessee: 8
Texas: 21
Utah: 3
Vermont: 1
Virginia: 7
Virgin Islands: 1
Washington: 41
West Virginia: 3
Wisconsin: 38
Wyoming: 2

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Federal Register

Tuesday
July 13, 1993

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20
Migratory Bird Hunting; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1993–94 early-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in early seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions.

DATES: The comment period for proposed early-season frameworks will end on July 22, 1993; and for late-season proposals on September 1, 1993. A public hearing on late-season regulations will be held on August 5, 1993, starting at 9 a.m.

ADDRESSES: The August 5 public hearing will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on these proposals and notice of intention to participate in the late-season hearing should be sent in writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1993

On April 9, 1993, the Service published for public comment in the **Federal Register** (58 FR 19008) a proposal to amend 50 CFR part 20, with comment periods ending as noted earlier. On June 1, 1993, the Service published for public comment a second document (58 FR 31244) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 24, 1993, a public hearing was held in Washington, DC, as announced in the April 9 and June 1 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons.

This document is the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with proposed frameworks for early-season regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1993–94 season. All pertinent comments received through June 24, 1993, have been considered in developing this document. In addition new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. Final regulatory frameworks for early seasons are scheduled for publication in the **Federal Register** on or about August 16, 1993.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published in the April 9 **Federal Register**. The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available about the status of waterfowl populations and habitat conditions on the breeding grounds.

Presentations at Public Hearing

Service employees presented reports on the status of various migratory bird species for which early hunting seasons are being proposed. These reports are briefly reviewed as a matter of public information.

Dr. David Caithamer, Waterfowl Specialist, reported briefly on habitat conditions observed during the May breeding waterfowl survey. In Prairie Canada and the northcentral U.S., there were an estimated 4.1 million ponds. This was not statistically different than the 3.6 million estimated for 1992 or the long-term average of 4.6 million. Pond numbers in the northcentral U.S. increased 117 percent from last year; most of these gains occurred in the eastern Dakotas. Conservation easements continued to provide excellent nesting cover in some regions Conditions were highly variable in Prairie Canada where pond numbers were slightly lower than last year and 33 percent lower than the long-term average. Estimates of pond numbers in each of the provinces were not statistically different from last year, but there were small increases in southern Alberta and small decreases in southern Saskatchewan and southern Manitoba. Agricultural impacts on upland and wetland habitats were severe in many regions of Prairie Canada.

In Alaska, the Yukon Territory, and the Northwest Territories spring phenology was earlier than normal as temperatures averaged 2–8 degrees Celsius above normal during April and May. Water levels in northern Saskatchewan, northern Alberta, northern Manitoba, and western Ontario were mostly lower than normal but beaver ponds provided excellent waterfowl habitat. In eastern Canada and the northeastern U.S., many areas received abnormally high amounts of precipitation during spring, but phenology was delayed due to cool temperatures. Wetland numbers appeared normal or higher than normal throughout Iowa, Nebraska, southern Minnesota, and southern Wisconsin. In California, ample winter and spring precipitation ended a prolonged drought.

In 1992, the May survey indicated 4.3 million blue-winged teal. This year's preliminary blue-winged teal population estimate is 3.2 million. This represents a 26 percent decline from last year and is 23 percent below the long-term average. However, independent surveys in several States indicated increased numbers of teal this year and that the May survey may have occurred before all teal had arrived on the survey area.

Mr. Ashley Straw, Woodcock Specialist, reported on the 1993 status of American woodcock. The report included harvest information gathered since 1963 and breeding population information (Singing-ground Survey) collected since 1968. Age-ratio information from harvested woodcock indicated that the 1992 recruitment index (ratio of immatures to adult females) was well below the long-term average for the Eastern Region (-17.6 percent) and somewhat lower than the long-term average for the Central Region (-11.1 percent). The 1992 recruitment indices were 1.4 immatures per adult female in the Eastern Region and 1.6 in the Central Region. Analysis of Singing-ground Survey data indicated no regional changes in the number of singing males between 1992 and 1993. However, there were significant long-term (1968–93) declines of 1.8 percent per year in the Eastern Region and 0.9

percent per year in the Central Region. Recent (1985–93) trends were also negative (-1.5 percent and -1.7 percent per year for the Eastern and Central Regions, respectively). During the past 9 years, breeding population indices of woodcock declined significantly in Connecticut, Maine, New Jersey, West Virginia, Ontario, and Wisconsin. Conversely, the index for Indiana increased significantly over this time period.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the mourning dove population in 1993. The report summarized call-count information gathered over the past 28 years. Trends were calculated for the most recent 2 and 10-year intervals and for the entire 28-year period. Between 1992 and 1993, the average number of doves heard per route declined significantly in the Central Management Unit, but did not change significantly in the Eastern and Western Units. No significant trend was found in doves heard in the Eastern or Central Units for either the 10 or 28-year time frames. In the Western Unit, no trend was evident over the most recent 10 years, but there has been a significant decline over 28 years. Trends for doves seen at the unit level over the 10 and 28-year periods generally agreed with doves heard.

Mr. Dolton also presented the status of white-winged and white-tipped doves in Texas. In 1993, call-count surveys indicated about 441,000 birds were nesting in the Lower Rio Grande Valley (Valley) in Cameron, Willacy, Hidalgo, and Starr Counties. This represented a 20 percent increase from 1992, but is still 12 percent below the 30-year average of 501,000 birds. In upper south Texas, approximately 480,000 whitewings were nesting throughout a 17-county area in 1993. This is a 17 percent increase from last year. The whitewing population increase in upper southern and central Texas may reflect a redistribution of Valley birds. In western Texas where a relatively small population of whitewings is found, an estimated 21,000 birds were reported in 1993, a 25 percent decrease from 1992. Estimates of white-tipped doves in the Valley in 1993 remained essentially unchanged from 1992. An average of 1.12 whitetips was heard per stop in 1993. This is only 12 percent below the 1.27 whitetips per stop recorded in the peak year of 1986.

Mr. Dolton then reported on the status of western whitewing doves in Arizona. Dove populations declined rapidly in the 1970's due of loss of nesting habitat from agricultural and reclamation projects, a change from grain to cotton farming practices, and overharvest. However, populations stabilized at a lower level during the 1980's and call-count indices indicate a moderate increase during the past 7 years. The 1993 call-count index increased 5.8 percent from 1992. As a result of lower population size and restrictive regulations, harvest has declined from about 700,000 in the 1960's to about 400,000 in the 1970's and has remained relatively constant between 100,000 and 200,000 during the past 12 years. A western white-winged dove management plan was developed by the Western Migratory Shore and Upland Game Bird Technical Committee during 1992 and is expected to be adopted by the Pacific Flyway Council in July 1993.

Mr. Roy Tomlinson, Western Dove and Pigeon Specialist, presented population and harvest information for the band-tailed pigeon. Band-tailed pigeons are managed as two separate and distinct populations: the Coastal Population (Washington, Oregon, Nevada, and California) and the Interior Population (Arizona, Utah, Colorado, and New Mexico). The Breeding Bird Survey (BBS) indicates that the Coastal population experienced an annual decline of 3.8 percent between 1968 and 1992. Counts conducted annually at mineral springs in Oregon during late August suggest that bandtails had two precipitous declines (in 1973 and again in 1985). Since 1985, these counts indicate that the population gradually has been increasing, but it remains at a lower level than during the 1970's. A call-count survey conducted annually in Washington during late June and early July indicates a downward trend of 7.8 percent per year during 1975-1992. Although the Coastal population has declined over the long-term, two indirect estimates suggest that the Coastal population numbered somewhere between 2.4 and 3.1 million birds in 1992.

The 1992 Coastal bandtail harvest is estimated to have been below 10,000 birds. A wing-collection survey in 1992 of Oregon and California hunters yielded recruitment information; the percentage young was 26 percent for Oregon bandtails and 38 percent for California birds.

Individual States in the Four-corners area do not conduct population surveys because of logistical problems. BBS data indicate a non-decreasing population throughout the breeding range of the Interior Population. The total hunting harvest for the four States in 1992 was 2,078. A wing-collection survey for birds in these States is being developed for 1993.

Mr. David Sharp, Central Flyway Representative, reported on the status and harvest of sandhill crane populations. The Mid-Continent Population appears to have stabilized following dramatic increases in the early 1980's. The preliminary Central Platte River Valley spring estimate for 1993, uncorrected for visibility, was about 251,000. This uncorrected index is similar (-3 percent) to the previous year's index of 257,700 but 39 percent below the 412,490 recorded in 1990. The photo-corrected 3–year average for the 1990–92 period was 386,433, which is within the established population objective range of 343,000–465,000. All Central Flyway States, except Kansas and Nebraska, elected to allow crane hunting in portions of their respective States in 1992–93; about 17,127 permits were issued and approximately 5,246 permittees hunted one or more times. Compared to the previous year's seasons, the number of permittees decreased about 6 percent and active hunters decreased 10 percent. An estimated 12,391 cranes were harvested in 1992–93, a 5 percent decrease from the 13,074 harvested in 1991–92. Mid-continent cranes are also hunted in Alaska, Canada, and Mexico; data for these areas are not yet available, but the combined harvest should not exceed 11,600 during the 1992–93 seasons. The total North American sport harvest was estimated to be near 25,000, which is similar to harvests recorded in the most recent decade.

Annual appraisals of the Rocky Mountain Population, which stages in the San Luis Valley of Colorado in March, suggest that the population has been relatively stable since 1984. The 1992 index of 20,014 cranes was within established objective levels of 18,000–22,000. The annual population index decreased to 16,457 in 1993, probably due in part to poor survey conditions. Limited special seasons were held during 1992 in portions of Arizona, Montana, New Mexico, and Wyoming, resulting in harvests estimated at 386 cranes, a decrease of 19 percent from the 1991 harvest estimate of 475 cranes. Population estimates and harvest for this population were within guidelines established in the Cooperative Flyway Management Plan.

Comments Received at Public Hearing

Three oral statements were presented at the public hearing on proposed early-season regulations. These comments are summarized below.

Vernon Bevill, representing the Central Flyway Council and the Texas Parks and Wildlife Department, commented on past cooperative efforts of States, flyways, and the Service and urged continuation of these efforts. He

reiterated the Council's recommendations to extend North Dakota's sandhill crane zone, allow 14 additional days to the Central Flyway sandhill crane season, modify Texas's mourning dove bag limit to include 6 white-winged doves in the aggregate bag limit in four Lower Rio Grande Counties, and adopt Texas's request for zones and splits for mourning dove hunting. He supported allowing 1/2-hour before sunrise shooting hours for blue-winged teal without further evaluation, citing information from law enforcement officials and field studies that there was negligible impact on non-target species last year. He stated that the Council supported requests for teal seasons in Iowa and Michigan, early Canada goose seasons in the Mississippi and Atlantic Flyways, and continuation of the band-tailed pigeon hunting season in the Pacific Flyway. He supported a ban on "F" shot for waterfowl hunting and recommended that time should be allowed for shot-shell industry, retailers, and hunters to adjust to new restrictions.

Susan Hagood, representing the Humane Society of the U.S., expressed concern about the continuation of season on species, such as the mottled duck, tundra swan, and sea ducks, for which there is little biological information. She suggested that the Service did not have adequate information to allow presunrise hunting during special seasons. States that hunt wood ducks and blue-winged teal should be collecting and reporting information on status of breeding populations. She commended the Service for proposing to bring the Pacific Flyway's 25 coot-moorhen limit in line with the lower limits allowed in other flyways, but believed that even those limits are excessive and encourage "target shooting." She opposed any hunting of doves in September because nesting is still occurring. She advocated closing the season on any species for which there was a declining trend and supported expanding the ban on toxic shot to include all migratory birds.

Charles E. Kelly, representing Alabama Department of Conservation and Natural Resources said that the Service should allow shooting hours which begin 1/2-hour before sunrise for September teal seasons. Also, representing the Southeastern Association of Fish and Wildlife Agencies, he complimented the Service regarding dove management. He said the hunting of mourning doves in September has been well studied, that these studies have shown no impact on the populations, and the record was sufficient such that the issue should not be revisited each year. He reported that the Association had submitted a recommendation regarding baiting regulations as they pertain to doves, and encouraged the Service to include the States as partners in the review of regulations, which will foster more cooperative participation in migratory bird management.

Written Comments Received

The preliminary proposed rulemaking, which appeared in the April 9 **Federal Register**, opened the public comment period for early-season migratory game bird hunting regulations. As of June 24, 1993, the Service had received 14 comments; 9 of these specifically addressed early-season issues. These early-season comments are summarized below and numbered in the order used in the April 9 **Federal Register**. Only the numbered items pertaining to early seasons for which written comments were received are included. The Service received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is also assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

1. Ducks.

i. Teal Seasons.

In the April 9 **Federal Register**, the Service reiterated that, consistent with the strategy for the use of shooting hours developed by the Service in 1990, shooting hours will begin at sunrise unless States can demonstrate that the impact of presunrise shooting hours on nontarget duck species is negligible. States will be allowed to continue presunrise shooting hours during their September seasons under the condition that they conduct studies or provide information that demonstrates a negligible impact on nontarget duck species during the one-half hour prior to sunrise. The Service proposes to continue this requirement.

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that an experimental 9-day September teal season be conducted for 3 years in Michigan. Limitations would be placed on both the number of areas open to hunting and hunter numbers.

The Committee also recommended that a 9-day season be held in the Southern Duck Zone in Iowa. Granting a teal hunting season in Iowa will allow similar hunting opportunity as in Illinois and Missouri.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the shooting hours remain one-half hour before sunrise to sunset.

Written Comments: The Louisiana Department of Wildlife and Fisheries summarized the results of their recent shooting-hour study and strongly supported uniform presunrise shooting hours for all migratory bird hunting, including teal seasons during September.

The Wisconsin Department of Natural Resources supported the return to sunrise shooting hours for September teal seasons, unless States can demonstrate that the impact of presunrise shooting hours on nontarget species is negligible. They objected to the inequality in duck-hunting opportunity in September and requested that the Service offer production States some compensation in lieu of September teal seasons. They expressed concern about the use of triggering levels for regulatory decisions and about the level of harvest on blue-winged teal south of the U.S. border.

ii. Wood Duck/Teal Seasons.

A cooperative Wood Duck Initiative undertaken by the Service and the Atlantic and Mississippi Flyway Councils in 1991 is designed to improve banding programs and evaluate techniques for obtaining estimates of breeding population size and production. The Service does not propose to discontinue or expand September wood duck seasons, at least until the first phase of this initiative has been completed.

The Service has published a strategy concerning shooting hours which states that during species-specific duck seasons shooting hours will begin at sunrise, unless States can demonstrate that the impact of presunrise shooting hours on nontarget duck species is negligible. The Service has recently received information from Kentucky and Tennessee regarding the effect of presunrise shooting hours; this information was deemed sufficient to demonstrate a negligible impact of presunrise shooting hours on nontarget duck species during seasons directed at both teal and wood ducks. Florida had previously provided sufficient information to allow presunrise shooting in that State. Therefore, Florida, Kentucky, and Tennessee will

be allowed to continue presunrise shooting hours during their September seasons without further evaluation.

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that shooting hours for these seasons in Kentucky and Tennessee be the same as those for regular seasons, one-half hour before sunrise to sunset.

3. Sea Ducks.

In the August 21, 1992, and April 9, 1993, **Federal Registers**, the Service expressed concern about the status of sea ducks and the potential impact that increased hunting activity could have on these species. The Service stated that additional data and a management plan are needed to guide future management efforts for these species. In 1992, the Service asked that the Flyway Councils make substantial progress to address these concerns prior to the 1993–94 regulations-development cycle. In April 1993, the Service requested that the Atlantic and Pacific Flyway Councils review the status of sea ducks before recommending frameworks for 1993–94 hunting seasons, and reiterated that, without more complete information on population status and harvest, the Service may be forced to restrict these special seasons. The Service herein proposes to restrict the 7-bird sea duck limit to include no more than 4 scoters.

Council Recommendations: The Atlantic Flyway Council recommended that the bag limit for sea ducks remain at 7, with a species-group restriction of 4 scoters, within the 107-day season during 1993.

4. Canada Geese.

The Service herein proposes to modify the criteria governing special Canada goose seasons. In the Atlantic and Mississippi Flyways, seasons are currently limited to 10 consecutive days. The Service proposes to drop this requirement. The Service notes that the criteria currently state that these seasons will generally be held between September 1 and September 10. Although these guideline dates contain sufficient flexibility to allow seasons after September 10, proposals for such seasons will be assessed on an area-by-area basis. The Service also notes that, for such seasons occurring after September 10, the provision will be continued which specifies that gathering of population information must begin at least 2 years prior to the requested season, and further emphasizes that data gathered prior to and during the experiment must strongly indicate that the season will successfully meet all established criteria.

Council Recommendations: The Atlantic Flyway Council made the following recommendations pertaining to the special Canada goose seasons:

In Maryland, initiate a 3-year experimental season in the 24 counties west of Chesapeake Bay with framework dates of September 1–15.

In Massachusetts, extend the framework closing date for the season to September 15.

In New Jersey, initiate a 3-year experimental season in the northern portion of the State with framework dates of September 1–19.

In New York, expand the area open to goose hunting in the western portion of the State, initiate a new 3-year experimental season in the southeastern portion of the State, and extend the framework dates for the season in both areas to September 1–17.

In Virginia, initiate a 3-year experimental season with framework dates of September 1–15.

In North Carolina, amend the experimental season to allow a season length of 15 consecutive days with framework dates of September 1–30, during 1993-95.

In Pennsylvania, amend the experimental season in the southeastern zone to include the Counties of Berks, Chester, and Delaware; and extend the framework dates in the southeastern zone to September 1–15.

The Upper-Region Regulations Committee of the Mississippi Flyway Council made the following recommendations pertaining to the special Canada goose seasons:

In Minnesota, a new 3-year experimental season in an expanded Southwest Goose Zone, an expansion of the Fergus-Falls/Alexandria Zone with continued monitoring of hunter numbers and harvest, operational status for the Southwest-Border-Zone season and the Fergus Falls/Alexandria-Zone season, and allow the 10-day seasons in all zones to begin on the first Saturday in September.

In Ohio, a new 3-year experimental 10-day season in 31 southwest counties.

In Wisconsin, operational status for the Southeast Subzone.

The Committee further recommended that annual monitoring of hunter numbers in experimental-season zones no longer be required after the criteria have been met and the seasons have become operational.

The Pacific Flyway Council made the following recommendations pertaining to special Canada goose seasons:

That operational status be given to the special season in Oregon and Washington; and that permits no longer be required, seasons be increased from 10 to 12 days, daily bag limits be increased from 2 to 3, and that States be allowed independent seasons.

That the Washington hunt area be enlarged to include the area along the Columbia River from the Astoria/Megler Bridge on State Highway 101 to the end of the North Jetty near Fort Camby.

That an experimental season be adopted in northwestern Oregon with season dates of September 1 through September 12 and a bag limit of 2. A mandatory State permit would be required.

Written Comments: The States of Maryland, New York, and Virginia requested approval of the Council recommendations pertaining to special Canada goose seasons in their respective States.

The Wisconsin Department of Natural Resources urged the Service to reconsider the criteria recently established for early and late special Canada goose seasons. They continue to believe that these criteria are inappropriate and too exacting. They further urged the Service to drop its requirement that States annually monitor harvest and hunter participation after the experimental period has been successfully completed.

9. Sandhill Cranes.

Council Recommendations: The Central Flyway Council recommended that the sandhill crane hunting area in North Dakota be extended eastward to include the entire State. The eastern portion of North Dakota was previously closed to protect greater sandhill cranes. Hunting zones, season dates, and bag limit restrictions have all been used to limit harvest of greater sandhill cranes in North Dakota. Measurements on harvested sandhill cranes are routinely taken throughout the hunting season to identify areas of distribution and harvest of greater sandhill cranes. North Dakota plans to continue these actions in the future. Cranes have recently shifted their migrational pattern and larger numbers of cranes are using the eastern portion of the State. North Dakota sportsmen have requested an opportunity to take advantage of this shift in crane migration. In addition, complaints of crane depredation of row crops in areas east of Highway 281 have been reported.

The Central Flyway Council recommended that season lengths for mid-continent sandhill cranes be increased by 14 days in the Central Flyway. Increasing the season length to

include the time when depredations on winter wheat occur may curtail the damage to these crops. The Council believes allowing additional hunting days will not harm the population and would increase hunting opportunity.

Written Comments: The Texas Parks and Wildlife Department requested a minor administrative change in the open area to reflect the recent completion of Interstate Highway 35 between Austin and the Texas-Oklahoma State line.

11. Moorhens and Gallinules.

In the April 9 **Federal Register**, the Service proposed to establish frameworks for common moorhens in the Pacific Flyway that are consistent with those established in other flyways. This proposal was made out of concern that for moorhens data are not available to suggest that additional opportunity beyond that offered to other flyways is warranted for moorhens in the Pacific Flyway. If this change were adopted, the season frameworks for moorhens in the Pacific Flyway would be the same as the frameworks offered to the other three flyways. Because the frameworks for moorhens in the Pacific Flyway are linked to the coot and duck frameworks, these proposed framework changes will be addressed as a late-season issue.

15. Band-tailed Pigeons.

In the April 9 **Federal Register**, the Service expressed its concern about the long-term decline of the Coastal Population of band-tailed pigeons, requested that States submit all available population-status and harvest information for Service review by June 1, and indicated that it would carefully evaluate all this data by June 15 to determine whether a hunting-season closure is warranted. In addition, the Service indicated that the status of the Interior Population of band-tailed pigeons is also not well understood. The Service herein proposes that all States having band-tailed pigeon hunting seasons require band-tailed pigeon hunters to obtain mandatory State permits (or participate in the nationwide Migratory Bird Harvest Information Program) to provide a sampling frame for obtaining more precise estimates of band-tailed pigeon harvest. Those States not participating in the Harvest Information Program would be required to conduct a harvest survey and provide the results to the Service by June 1.

Written Comments: The California Department of Fish and Game and the Oregon Department of Fish and Wildlife requested continuation of the open season. They believed that the long-term status of the population is dependent primarily upon habitat conditions and that the last 20 years of population indices have not changed sufficiently to warrant further restrictions in harvest. They provided a joint assessment of population information, harvest and hunter-activity information, and suspected causes for the long-term decline, and a summary of ongoing efforts in the two States. They stated that the current hunting season allows for the efficient collection of biological information about reproduction and, potentially, the prevalence and effect of disease. They believe complete cessation of hunting is not likely to result in substantial gains in this population given the low levels of harvest under current regulations.

16. Mourning Doves.

The Service notes that States in the Eastern and Central Management Units have the option to select seasons in each of two zones and that seasons in the southern zones of Texas, Louisiana, Mississippi, Alabama, and Georgia may commence no earlier than September 20. The Service herein proposes to extend that requirement to Florida as well.

Council Recommendations: The Central Flyway Council recommended that Texas be allowed to split the mourning dove season into three segments in its central and southern zones on an experimental basis; however, Texas would continue to utilize 3 zones. These additional season segments would permit greater flexibility in establishing dove-hunting seasons consistent with anticipated migration patterns and population levels and would also allow additional "opening days" to be established for Texas sportsmen.

Written Comments: The Florida Game and Freshwater Fish Commission has requested that they be able to avail themselves of the zoning option and establish two zones as described in a later portion of this document. The Alabama Division of Game and Fish requested that Barbour County be moved from the northern to the southern zone.

17. White-winged and White-tipped Doves.

Council Recommendations: The Central Flyway Council recommended that the number of white-winged doves allowed in the 12-bird aggregate bag limit during the mourning dove season be increased from 2 to 6 in the Texas Counties of Cameron, Hidalgo, Starr, and Willacy.

18. Alaska.

Council Recommendations: The Pacific Flyway Council recommended that a new experimental tundra swan season be established in Game Management Unit 18 (Yukon-Kuskokwim Delta). The framework dates would be September 1 - October 31. A maximum of 500 permits would be issued, and hunters would be allowed more than 1 permit per season, issued 1 at a time upon filing a harvest report.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—

Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", filed with EPA on June 9, 1988. Notice of Availability was published in the Federal Register on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

Endangered Species Act Consideration

The Division of Endangered Species is completing a biological opinion on the proposed action. As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. The Service's biological opinions resulting from consultations under section 7 are considered public documents and are available for inspection in the Division of Endangered Species (Room 432) and the Office of Migratory Bird Management (Room 634), Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the April 9 Federal Register, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis (FRIA), and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. A Regulatory Flexibility Analysis (RFA), prepared as part of the FRIA concluded that this rule would have significant effects on small entities. Information contained in that document stated that while the Service believes that its rules for migratory bird hunting are "major," and impact "small entities," particularly small businesses, it has been unable to locate information of the kind needed to complete its analysis on small entities. The FRIA and the RFA document the relationships between hunting regulations, and hunter numbers and hunter days, both of which have major economic implications. The Service concluded that the adoption of other regulatory options would have little impact upon hunter expenditures at the national-economy or small-entity levels. Unless migratory bird hunting regulations are established, the national economy stands to lose at least $1 billion annually. Most of this loss would be borne by small entities.

It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Department of the Interior, Washington, DC 20240. As noted in the above Federal Register reference, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Authorship

The primary authors of this proposed rulemaking are Robert J. Blohm and William O. Vogel, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1993–94 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a—d and e—j).

Dated: July 7, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

Proposed Regulations Frameworks for 1993–94 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director approved the following proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for certain migratory game birds between September 1, 1993, and March 10, 1994.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area, Zone, and Unit Descriptions: Geographic descriptions that differ from those published in the August 21, 1992, Federal Register (at 57 FR 38212) are contained in a later portion of this document.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit (All States east of the Mississippi River, and Louisiana)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 6 of which may be white-winged doves and no more than 2 of which may be white-tipped doves, with the following exceptions:

1. During the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

2. In Cameron, Hidalgo, Starr, and Willacy Counties, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-winged doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)

Hunting Seasons and Daily Bag Limits:

Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California—Not more than 60 days which may be split between two periods, September 1-15 and November 1 - January 15. In Arizona, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-winged Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada counties of Clark and Nye, and in the California counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which not more than 6 may be white-winged doves and not more than 2 may be white-tipped doves; except in Cameron, Hidalgo, Starr, and Willacy Counties where the daily bag limit may include no more than 2 white-winged doves and 2 white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Band-tailed Pigeons

Pacific Coast States: California, Oregon, Washington, and Nevada.

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

Permit Requirement: The appropriate State agency must issue permits, and report on harvest and hunter participation to the Service by June 1 of the following year, or participate in the Migratory Bird Harvest Information Program.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 7.

Four-Corners States: Arizona, Colorado, New Mexico, and Utah.

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Permit Requirement: The appropriate State agency must issue permits, and report on harvest and hunter participation to the Service by June 1 of the following year, or participate in the Migratory Bird Harvest Information Program.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into two segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species. Possession limits are twice the daily bag limit.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1 and January 31. States in the Central and Mississippi

Flyways may select hunting seasons between September 1 and January 31.

Hunting Seasons and Daily Bag Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with a daily bag limit of 3; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with a daily bag limit of 5. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1 and February 28. Except, in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flywey have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into two segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit in his possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and not to exceed 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils. All hunts except those in Arizona, New Mexico (Middle Rio Grande Valley), and Wyoming will be experimental.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck-season daily bag and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States.

September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days, with a daily bag limit of 4 teal.

Shooting Hours: From sunrise to sunset daily.

Special September Teal/Wood Duck Seasons

Florida: An experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Tennessee and Kentucky: In lieu of a special September teal season, an experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Special Early Canada Goose Seasons

Atlantic Flyway

Hunting Seasons: Experimental Canada goose seasons may be selected by Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, and Virginia. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Outside Dates: Between September 1 and September 10, except that the closing date is September 15 in Maryland, Massachusetts, New Jersey, New York, Virginia and southeastern Pennsylvania, and September 30 in North Carolina.

Daily bag limits: Not to exceed 5 Canada geese.

Mississippi Flyway

Hunting Seasons: Canada goose seasons of up to 10 consecutive days may be selected by Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The seasons in the following States and portions of States are experimental: Indiana; Missouri; Ohio; in Michigan, that portion of the Upper Peninsula previously open to the hunting of Canada geese in early September and that portion of the Lower

Peninsula including Oceana, Newaygo, Mecosta, Isabella, Midland, and Bay Counties and all counties north thereof; in Minnesota, the Fergus Falls/Alexandria and Southwest Canada Goose Zones. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Outside Dates: Between September 1 and September 10, except in Missouri, where the outside dates are October 1 and October 15, and Minnesota, where the closing date is September 16.

Daily Bag Limits: Not to exceed 5 Canada geese.

Pacific Flyway

Wyoming may select a September season on Canada geese subject to the following conditions:

1. The season must be concurrent with the September portion of the sandhill crane season.
2. Hunting will be by State permit.
3. No more than 150 permits, in total, may be issued.
4. Each permittee may take no more than 2 Canada geese per season.

Utah may select an experimental special season on Canada geese in Cache County subject to the following conditions:

1. Not to exceed 4 days during September 1–15.
2. Hunting will be by State permit.
3. Not more than 200 permits may be issued.
4. Each permittee may take no more than 2 Canada geese per season.

Oregon, in the Lower Columbia River Zone, may select a season on Canada geese subject to the following conditions:

1. The season length is 12 days during September 1-12.
2. The daily bag limit is 3 Canada geese.

Oregon, in the Northwest Zone, may select a season on Canada geese subject to the following conditions:

1. The season will be experimental.
2. The season length is 12 days during September 1–12.
3. Each permittee may take no more than 2 Canada geese per day.

Washington may select a season on Canada geese, subject to the following conditions, in the Lower Columbia River Zone:

1. The season length is 12 days during September 1–12.
2. The daily bag limit is 3 Canada geese.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, cackling Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession limits:

Ducks—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The basic limits may include no more than 2 pintails daily and 6 in possession, and 2 canvasbacks daily and 6 in possession.

In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6, of which not more than 4 may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—A daily bag limit of 3.

Tundra swans—An open seasons for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued in GMU 22, authorizing each permittee to take 1 tundra swan per season.
2. No more than 500 permits may be issued during the experimental season in GMU 18. No more than 1 tundra swan may be taken per permit.
3. The seasons must be concurrent with other migratory bird seasons.
4. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1 of the following year.

Hawaii

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days (70 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves and scaly-naped pigeons in the aggregate, no more than 5 of which may be scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 3.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 6.

Closures: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks:

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 3 ducks.

Closures: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Except for the following descriptions, the Service does not propose any changes to those zone, area, and unit descriptions published in the August 21, 1992, Federal Register (at 57 FR 38212). The Service will publish descriptions of all early-season areas, units, and zones in the early-season final frameworks.

Central Flyway portion of the following States consists of:

Colorado: That area lying east of the Continental Divide.

Montana: That area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

New Mexico: That area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Wyoming: That area lying east of the Continental Divide.

The remaining portions of these States are in the Pacific Flyway.

Mourning and White-winged Doves

Alabama

South Zone: Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone: Remainder of the State.

Florida

Northwest Zone: The counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. Highway 27 and east of State Road 155), Jefferson (south of U.S. Highway 27, west of State Road 59 and north of U.S. Highway 98), and Wakulla (except that portion south of U.S. Highway 98 and east of the St. Marks River).

South Zone: Remainder of State.

Special September Goose Seasons:

Atlantic Flyway

Maryland

Open Area: Counties of Garret, Allegany, Washington, Frederick, Carroll, Harford, Baltimore, Howard, Montgomery, Prince Georges, Anne Arundel, Calvert, Charles, and St. Mary's.

New Jersey

Open Area: That portion of New Jersey within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Parkway to its intersection with Route 70; then west on Route 70 to its intersection with Route 206; then south on Route 206 to its intersection with Route 54; then south on Route 54 to its intersection with Route 40; then west on Route 40 to its intersection with the New Jersey Turnpike; then south on the Turnpike to the Delaware State boundary line; then north on the Delaware State boundary line to its intersection with the Pennsylvania State boundary; then north on the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary.

New York

Northern Area: All or portions of St. Lawrence County; see State hunting regulations for area descriptions.

Western Area: Counties of Erie, Cattaraugus, Chautauqua, Niagara, Orleans, and Genesee, and portions of Wyoming, Livingston, Allegany and Steuben Counties.

Southeastern Area: All of Rockland, Westchester, Orange, Putnam, Dutchess, Columbia, and Rensselaer Counties, and portions of Sullivan, Delaware, Ulster, Greene, Albany, Schenectady, Saratoga, Warren, and Washington Counties.

Pennsylvania

Northwestern Early-Season Goose Area—Counties of Butler, Crawford, Erie, and Mercer.

Southeastern Early-Season Goose Area—Counties of Berks, Bucks, Chester, Delaware, Lehigh, and Montgomery.

Virginia

Open Area: Counties of Albemarle, Caroline, Charles City, Culpeper, Fairfax, Fauquier, Fluvanna, Goochland, Greene, Hanover, Henrico, James City, Loudoun, Louisa, Madison, New Kent, Orange, Prince William, Rappahannock, Spotsylvania, Stafford, and York.

Mississippi Flyway

Minnesota

Twin Cities Metro Zone: All of Hennepin and Ramsey Counties.

In Anoka County; the municipalities of Andover, Anoka, Blaine, Centerville, Circle Pines, Columbia Heights, Coon Rapids, Fridley, Hilltop, Lexington, Lino Lakes, Ramsey, and Spring Lake Park; that portion of Columbus Township lying south of County State Aid Highway (CSAH) 18; and all of the municipality of Ham Lake except that portion described as follows:

Beginning at the intersection of CSAH 18 and U.S. Highway 65, then east along CSAH 18 to the eastern boundary of Ham Lake, north along the eastern boundary of Ham Lake to the north boundary of Ham Lake, west along the north boundary of Ham Lake to U.S. 65, and south along U.S. 65 to the point of beginning.

In Carver County; the municipalities of Carver, Chanhassen, Chaska, and Victoria; the Townships of Chaska and Laketown; and those portions of the municipalities of Cologne, Mayer, Waconia, and Watertown and the Townships of Benton, Dahlgren, Waconia, and Watertown lying north and east of the following described line:

Beginning on U.S. 212 at the southwest corner of the municipality of Chaska, then west along U.S. 212 to State Trunk Highway (STH) 284, north along STH 284 to CSAH 10, north and west along CSAH 10 to CSAH 30, north and west along CSAH 30 to STH 25, west and north along STH 25 to CSAH 10, north along CSAH 10 to the Carver County Line, and east along the Carver

County Line to the Hennepin County Line.

In Dakota County; the municipalities of Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemont, South St. Paul, Sunfish Lake, and West St. Paul; and the Township of Nininger.

In Scott County; the municipalities of Jordan, Prior Lake, Savage and Shakopee; and the Townships of Credit River, Jackson, Louisville, St. Lawrence, Sand Creek, and Spring Lake.

In Washington County; the municipalities of Afton, Bayport, Birchwood, Cottage Grove, Dellwood, Forest Lake, Hastings, Hugo, Lake Elmo, Lakeland, Lakeland Shores, Landfall, Mahtomedi, Marine, Newport, Oakdale, Oak Park Heights, Pine Springs, St. Croix Beach, St. Mary's Point, St. Paul Park, Stillwater, White Bear Lake, Willernie, and Woodbury; the Townships of Baytown, Denmark, Grant, Gray Cloud Island, May, Stillwater, and West Lakeland; that portion of Forest Lake Township lying south of STH 97 and CSAH 2; and those portions of New Scandia Township lying south of STH 97 and a line due east from the intersection of STH 97 and STH 95 to the eastern border of the State.

Fergus Falls/Alexandria Canada Goose Zone—All or portions of Becker, Clay, Douglas, Grant, Otter Tail, Pope, Stevens, Travers, and Wilkin Counties.

Southwest Canada Goose Zone—All of Blue Earth, Cottonwood, Faribault, Jackson, Lincoln, Lyon, Lesueur, Martin, McLeod, Murray, Nicollet, Nobles, Sibley, Waseca, and Watonwan Counties; that portion of Brown County south of State Highway 14, that portion of Meeker County south of State Highway 12, and that portion of Renville County east of State Highway 4.

Ohio

Northeast Zone—Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties.

Southwest Zone—Allen, Auglaize, Butler, Champaign, Clark, Clermont, Clinton, Darke, Delaware, Fairfield, Fayette, Franklin, Greene, Hamilton, Hancock, Hardin, Licking, Logan, Madison, Marion, Mercer, Miami, Morrow, Montgomery, Preble, Pickaway, Putnum, Ross, Shelby, Union, and Warren Counties.

Pacific Flyway

Oregon

Lower Columbia River Zone—Those portions of Clatsop, Columbia, and Multnomah Counties within the following boundary: Beginning at Portland, Oregon, at the south end of the Interstate 5 bridge; south on I-5 to Highway 30; west on Highway 30 to the town of Svensen; south from Svensen to Youngs River Falls; due west from Youngs River Falls to the Pacific Ocean coastline; north along the coastline to a point where Clatsop Spit and the South Jetty meet; due north to the Oregon-Washington border; east and south along the Oregon-Washington border to the I-5 bridge; south on the I-5 bridge to the point of beginning.

Northwest Oregon Zone—All of Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties; except for the Lower Columbia River Zone.

Washington

Lower Columbia River Zone—Beginning at the Washington-Oregon border on the I-5 bridge near Vancouver, Washington; north on I-5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Sandhill Cranes:

Central Flyway

Texas

Regular-Season Open Area—That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; Interstate Highway 35 to the Texas-Oklahoma border.

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Part VII

Department of Agriculture

Forest Service

Fee Schedule for Communication Uses; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

Fee Schedule for Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for public comment.

SUMMARY: The Forest Service proposes to adopt a revised fee schedule for annual rental charges for certain communications uses authorized on National Forest System lands. This proposed schedule would supplement fee schedules for communications uses adopted by Forest Service Regions in 1989 and modified in 1992. The proposed schedule would complete the agency's efforts to establish annual rental fees for all communications uses in Forest Service Regions 1–6 and to establish fees that reflect fair market value, as required by Title V of the Federal Land Policy and Management Act of 1976. Public comment is invited.

DATES: Comments must be received in writing by October 12, 1993.

ADDRESSES: Send written comments to the Director, Lands Staff (2720), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed policy in the Office of the Director, Lands Staff, room 4, South, Auditor's Building, 205 14th Street SW., Washington, DC. Those wishing to inspect comments are encouraged to call ahead (202 205–1367) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: John Anderson, Lands Staff, Room 4, South, (202) 205–1256.

SUPPLEMENTARY INFORMATION:

Background on Communications Site Fees

Pursuant to statutory and regulatory authority, the Forest Service authorizes use of National Forest System lands for a variety of public, commercial, and private activities. There are over 72,000 authorizations in effect on these Federal lands. Included in this total are about 6,000 authorizations for communications uses, generally found at high elevation locations and involving the construction of a building and tower with antennae or the placement of one or more antennae placed atop a building owned by another permittee. The agency recognizes 13 types of communications uses; these generally correspond to types of communications licenses issued by the Federal Communications Commission, and are grouped into 3 categories, as follows:

Category of use	Type of use
A. Commercial:	1. Radio broadcast. 2. Television broadcast. 3. Broadcast translator. 4. Cable and subscription television. 5. Mobile radio: commercial communications. 6. Cellular telephone.
B. Industrial:	1. Common carrier microwave relay. 2. Industrial microwave relay. 3. Mobile radio: internal communications. 4. Natural resource/environmental monitoring. 5. Passive reflector.
C. Personal:	1. Amateur radio. 2. Personal/private "receive only."

Since 1983, the Forest Service has sought to bring annual rental fees for communications uses authorized to use National Forest System lands to fair market value. Section 504(g) of the Federal Land Policy and Management Act of 1976 states "The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way * * *"

Further, the Independent Offices Appropriations Act of 1952 requires the Federal Government to receive fees for the use of Federal lands and authorizes heads of agencies to charge fees for services or benefits provided by the agency that are fair and based on fair market value and cost to the Government. Office of Management and Budget Circular A–25 implements and further defines the 1952 Act and directs agencies to establish user fees based on sound business management practices.

Until 1983, Forest Service fees for communications uses were 0.2 percent of the permittee's investment plus 5 percent of the rental fees received by a permittee from sub-tenants of the same facility. An administrative appeal decision in 1983 concluded that this fee formula did not yield fair market value. Consequently, in 1985, the Forest Service, by notice in the **Federal Register** (50 FR 40574), adopted national policy on administration of communications sites, including direction to its field officers to use current market data to determine rental fees. These fees were to be determined on a regional basis by one of three methods: Fee schedules, individual site appraisals, or competitive bids. The Regional Foresters chose to use fee schedules. Surveys of lease transactions in the private market were completed in 1986. Those surveys provided the necessary information on fair market value and were the basis for development and promulgation of proposed regional fee schedules. Final schedules were adopted by the Regional Foresters through publication in the **Federal Register** from 1987–1989. These schedules applied to communications sites serving mostly rural areas. The notices explained that fees for sites serving urban areas—Los Angeles, for example—would be determined by on-site appraisals, because the higher values attached to these sites were not typical of the transactions forming the basis of the fee schedules. (See 54 FR 35031, August 23, 1989, for an example of these regional fee schedules.)

Because the agency's pre-1985 fee policy for communications sites had no provision for updating fees, most permittees' fees had remained unchanged for as long as 20 years. Consequently, when the new fees were placed in effect, these permittees faced significant fee increases. This led to widespread permittee complaint to the agency and Congress. In response, in the fiscal year 1990 appropriations act for the agency, Congress adopted an administrative provision preventing the agency from raising fees for existing communications uses over the amount in effect on January 1, 1989. Congress also directed the agency to review the regional fee schedules, giving particular emphasis on how the schedules affected rural communities in the western U.S., and report its findings to the House and Senate Appropriations Committees.

The congressional action did not prohibit the agency from establishing fees at fair market value for communications uses occupying new facilities after January 1, 1989. Under existing statutory and regulatory authority, the agency has proceeded to require those obtaining permits after January 1, 1989, and occupying new facilities to pay annual rental fees based on fair market value.

To provide the factual basis for the congressionally mandated report, appraisers of the Forest Service and Bureau of Land Management conducted intensive appraisals of 12 individual communications uses located throughout the western U.S. Over 100 owners or lessees of private communications sites were contacted to gain information on lease fees and terms. The report submitted to the Appropriations Committees in April

1991 recommended several changes to the previously adopted regional schedules. These recommendations were incorporated as modifications to the 1989 fee schedules through regional notices sent to communications site permittees in 1992.

Congress, however, felt that the agency's fee determination process was flawed and that its permittees had not had a sufficient opportunity to participate in the analysis and report. Consequently, the prohibition on fee increases for uses authorized prior to 1989 was continued and was extended to include communications sites on lands administered by the Bureau of Land Management. The fiscal year 1991 appropriations act provision did allow both agencies to increase their fees for existing uses up to 15 percent over those fees in effect on January 1, 1989.

In September 1991, the Forest Service contracted with a private, independent appraiser to appraise all communications uses at 12 National Forest mountain top sites throughout the western U.S. that served urban areas. This appraiser, following uniform appraisal practices, examined private leases on lands similar to those administered by the agency and serving urban populations in Albuquerque, Tucson, Flagstaff, Boise, Missoula, San Diego, and the Los Angeles Basin. The appraisals were completed and accepted by the agency in March 1993.

The appraised values for these sites confirmed the influence of population on communications site rental value. For example, the appraiser concluded that the annual value for television broadcast transmitters in the Los Angeles area was $75,000, while comparable leases on sites serving low population areas in the Interior West were in the $5,000 range. Rental fees for commercial mobile radio ranged from a high of $60,000 in the Los Angeles Basin to a low of $2,500 in some areas of the Interior West.

The agency notified each permittee occupying one of the 12 sites by registered letter of the appraisal and invited the permittees to provide any communications site lease information and any concerns about the agency's fees determninations practices. Over 2,000 letters were sent; 106 responses were received. Following completion of the appraisal, the agency scheduled public meetings at the 12 locations to allow permittees and others to review the results with the appraiser. Permittees raised concern over the values resulting from these appraisals, many of whom assumed that the values translated directly to rental fees. In fact, the appraised values constitute advice to Forest Service officials charged with the responsibility of establishing fees. These officials consider a wide range of factors affecting fair market value and do not limit a fee decision to only appraisal results.

While the on-site appraisals were underway, Congress, through the fiscal year 1992 appropriations act, continued the limitation on fee increases for uses authorized prior to 1989. In this legislation, Congress also directed the Secretaries of Agriculture and of the Interior to establish an advisory committee comprised of representatives of the broadcast industry (radio and television) to advise the Secretaries of Agriculture and of the Interior on appropriate methods of determining fees for radio and television broadcast uses on National Forest System and public lands.

The Radio and Television Broadcast Use Fee Advisory Committee was established on June 18, 1992. It submitted its report to the Secretaries on December 11, 1992. The 11-member committees recommended the use of fee schedules over individual site appraisals based on cost efficiency and ease of administration. It also developed and proposed actual fee schedules for radio and television broadcast uses. The committee considered fee schedules prepared by the agencies and developed from comparable private lease transactions, including appraisal information from the 12 communications sites described above. However, the committee was concerned that these fee schedules would impose fees on broadcasters that were too substantial. It elected instead to adopt fee schedules developed from information obtained from several sources, including informal surveys by its members. The committee first developed estimated rental fees for television broadcast uses, stratified into population categories using the broadcast industry's "Area of Dominant Influence" (ADI) market rankings. Estimated fees for radio broadcast uses were then set at 70 percent of the television use fee and stratified by population using the "Metro Survey Area" (MSA) population market rankings for radio. The estimated rental fees for both television and radio use were then reduced by 30 percent, an amount identified by the committee as a composite adjustment to account for such factors as public service by the permittee, differences in rights granted by private and public leases, and additional costs and administrative burdens imposed by the requirements of the agencies. In recommending this schedule, the committee acknowledged that its recommended television and radio fee schedules did not represent fair market value.

The Advisory Committee made additional recommendations on implementation of the fee schedules and administration of authorizations. It suggested that permittees who sublease space to other communications facilities should pay 25 percent of their gross rental income to the Government in addition to the annual fee. A companion recommendation would require the agencies to adopt a "footprint" lease in which only the owners of the building would have an authorization and the tenants would not be issued authorizations by the agencies as is the current practice. It recommended that the base rental fee be indexed to the Consumer Price Index-Urban (CPI–U) with annual indexed fee increases of at least 3 percent but no more than 5 percent. Finally, it recommended that fee increases of more than $1,000 to individual permittees be phased-in over a 2 year period and the entire fee schedule be re-evaluated after a period of no more than 10 years.

The Acting Secretary of Agriculture, in transmitting the Advisory Committee report to Congress, endorsed the committee's recommendations on fee implementation and administration, but rejected the proposed fee schedule on the basis that it did not represent fair market value, as required by law. The Acting Secretary praised the work of the committee in providing insights into the characteristics of the radio and television broadcasting industry but stated that the committee-recommended fees would deprive the Government and taxpayers of legitimate revenues totalling millions of dollars each year.

Proposed Fee Schedule

In response to the Secretary's concern, as well as to address the need to develop fee schedules for all categories of communications uses, the Forest Service and the Bureau of Land Management continued their efforts to develop market-based fee schedules. The agencies continued to assemble data from many segments of the communications industry, resulting in a data base incorporating over 1,500 private lease transactions. The cellular telephone industry, which had not been included in earlier fee schedules, provided current lease information that enabled the agencies to develop schedules for this type of use. The commercial mobile radio segment of the communications industry also volunteered substantial private lease information from certain markets.

Based on the quantity and quality of its private lease information, and cognizant of the cost efficiencies and reduced impacts on agency staff obtained by using fee schedules over on-site appraisals, the Forest Service has decided to use fee schedules for most communications uses. Thus, it proposes to abandon its earlier policy of using fee schedules only for sites serving rural areas and using on-site appraisals for sites serving urban areas.

The agency believes that the statutory requirement for fair market value for use of communications sites on Federal lands can be obtained from an analysis of the actions of private property owners that are operating in the competitive marketplace. The Forest Service and the Bureau of Land Management, using information gained from the Advisory Committee, hundreds of discussions with industry representatives and private lessors, commercial communications site managers, State and local government representatives, appraisers and over 1,500 confirmed private lease transactions, have developed fee schedules for the 4 categories of communications use not previously included in Forest Service fee schedules. These categories are: (1) FM radio broadcast, (2) television broadcast, (3) mobile radio commercial, and (4) cellular telephone. In every case, the fees indicated in the schedule are within the range indicated by the private lease transactions. The fee schedule is shown in Table I which is set out at the end of this notice.

Explanation of Table 1

The proposed fee schedule in Table 1 reflects information provided by the Advisory Committee, industry representatives, lessees and lessors, appraisers, State and local agencies, commercial site managers, and over 1,500 private communication site transactions. The market data was separated according to the category of communications use. Within each category, the individual transaction was reviewed to identify the ground rent portion of the fees (that is, the amount of the fee directly attributable to use of the land, excluding amounts for utilities, roads or other benefits provided by the lessor).

Industry representatives helped define the parameters for the groupings within each schedule. In the case of television broadcast, the Advisory Committee recommended the strata be based on the Area of Dominant Influence (ADI), a market ranking system developed by the Arbitron Company that ranks 210 television markets in the U.S. according to the number of television households they contain. For radio broadcast, the Advisory Committee suggested the use of Arbitron Company's Metro Survey Area ranking of 261 U.S. radio markets. Areas not included in the television and radio market survey listings were included in the lowest fee strata. The agencies found that about 50 percent of the U.S. radio markets are not included in the Metro Survey Area rankings. For commercial mobile radio use, population (based on U.S. Census reports) was used to define the size of area served by the facility. Cellular telephone use was based on whether the facility was located within or outside a Standard Metropolitan Statistical Area, as defined by the U.S. Department of Commerce. The suggested parameters for each of the 4 uses were validated with the market data in the agency's market analysis to ensure there was an appropriate correlation.

In establishing fees for each strata, the agencies stayed within the range of private lease information. Since each strata represented a substantial market share, fees were established based on the lower range of information found in each strata.

Table 1 also addresses the issue of subtenants in lessees communications facilities. Again, the agencies looked to the market for guidance. In the case of radio and television broadcast facilities, a range of percentages were found, averaging about 25 percent. That number was consistent with the Advisory Committee's recommendation that the Government collect 25 percent of tenant revenues. This is believed consistent with the practice in the private market and is proposed to be adopted by the agencies.

In the other categories of use, the agencies were also guided by private market practice. For example, in most markets, the rentals for commercial mobile radio facilities are a flat fee. However, newer private leases in the largest markets indicate an increasing number of transactions where the lessor shares in the revenues in lieu of a flat fee. The proposed commercial mobile radio fee schedule reflects this information.

Additional Fee Schedule Considerations

The Forest Service considered several other factors associated with the adoption of a fee schedule which would be incorporated into the authorization of a communications site. Such factors include those revealed in the market analysis and those recommended by the Advisory Committee. Thus, upon adoption of the fee schedule the agency also proposes to adopt the following terms and conditions as part of the permit for communications site uses:

1. Annual Indexing

The rental fees shown in Table 1 would be subject to an annual index to ensure the fee is kept current with fair market value. The agency has found that use of an index is common practice in the private lease market. Accordingly, it proposes to use the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (CPI–U) as an annual index for communications site fees. To yield a CPI–U multiplier that would be used to annually update the communications site fee schedule, the CPI–U for July of the current year would be divided by the CPI–U for July of the previous year.

2. Footprint Lease

The fee schedule indicates that a permittee owning a communications facility whose authorizations allows the leasing of space in that facility to other communications facilities would be required to pay 25 percent of the gross rental receipts to the Government in addition to the annual rental fee. If implemented, the agency would no longer require separate authorizations for tenants in a permittee-owned building. Instead, the agency would issue a "footprint lease" to the building owner who would be designated as a "facility manager." Use of the footprint lease would improve the efficiency of the agency's administration of these multi-user facilities and result in considerable cost-savings. Further, this practice is commonly found in leases on private communications sites.

Holders of these leases would be required to submit a certified list to the agency identifying tenants, fees received, and gross revenue. The lease would contain a "best efforts" clause assuring that rents are market-based and correctly reported to the agency. This would be necessary to ensure that there is no attempt at avoiding the proper fair market value fee.

3. Fee Schedule Phase-In

The agency recognizes that implementation of the proposed fee schedule could significantly raise fees for some permittees. Thus, it proposes to phase-in the fee schedule as follows: If the fee increase is $1,000 or more, the fee would be phased-in over a 5 year period at $1,000 per year or 20 percent of the total increase per year, whichever is greater. The full fee, as indicated in the fee schedule, plus additional annual amounts through indexing, would be reached in the fifth year. For example,

for a current fee of $1,000 that increases to a new fee of $5,000, the first year fee would be $2,000, the second year would be $3,000, continuing until the new fee plus annual indexing is in place. For a current fee of $1,000 that increases to $11,000, the first year fee would be $3,000 ($1,000 plus 20 percent of $10,000), the second year fee would be $5,000, the third year fee $7,000, the fourth year fee $9,000, and the fifth year fee $11,000, plus annual indexing.

The phase-in of the fee schedule is being proposed as a sound business management practice. The agency recognizes that the phase-in will result in reduced receipts to the Treasury in the initial years of the revised fee schedule implementation. However, the agency believes that the magnitude of some fee increases under the proposed fee schedule, due in part to the length of time the fee schedule has been under development and debate, and to its decision to change the method of determining fair market value to obtain more accurate fees, could impose an economic burden on some permittees with an associated risk of adverse impact on their business. The phase-in is proposed to minimize that risk.

4. Reevaluation of the Fee Schedule

The agency proposes to reevaluate the fee schedule in ten years or less to ensure communications site fees remain at fair market value. Thus, each permittee's annual rental fee established as a result of this schedule would be reviewed.

Fee Schedule Implementation

Adoption of this fee schedule and associated policies will require Forest Service Region's 1 through 6, generally encompassing National Forest System land west of the one-hundredth meridian, to modify their existing fee schedules to incorporate Table 1. Upon adoption of a final fee schedule, the agency will direct the Regional Foresters to make appropriate revisions to those schedules and to give notice of those changes in the **Federal Register**. The agency anticipates adoption and implementation of a final fee schedule for the 4 communications uses described in this notice by January 1, 1994.

Since the private market analysis completed by the Forest Service and the Bureau of Land Management focused primarily on communications uses in the western States, this proposed fee schedule is not intended to guide fees in Regions 8 and 9, encompassing the 33 eastern States. Instead, the Forest Service will validate the fee schedule's applicability to communications sites in those States, collect additional market data as necessary, and make any necessary supplements to the Table 1 fee schedule to incorporate communications sites in the eastern U.S. The agency expects to implement the fee schedule in the eastern States by January 1, 1995.

Summary

The Forest Service is proposing the fee schedule in Table 1 as a supplement to the existing 6 western regional fee schedules adopted in 1989 and modified in 1992. The agency believes that the proposed fee schedule meets the statutory and regulatory requirements to obtain fair market value fees from authorized commercial and private communications uses on National Forest System lands and that its adoption would be in the public interest.

The agency's regional offices would make appropriate modifications to existing fee schedules adopted in 1989, which are incorporated as regional supplements to title 2700, Special Uses Management of the Forest Service Manual. If this fee schedule is adopted, it would place most communications uses on National Forest System lands in Regions 1 through 6 under a fee schedule. The fee schedule would be validated for use in Regions 8 and 9 in the coming year and necessary modifications to accommodate communications sites in the eastern U.S. would be made. Exceptions to use of the fee schedule would be allowed in certain situations. For example, a bid procedure may be used where a communications site is the focus of competition between like facilities. Sites with truly unique characteristics, such as the Aspen-Vail area of Colorado, also may require use of on-site appraisals.

It is the agency's intention that its fee schedule be fully consistent with that of the Bureau of Land Management. The Forest Service understands that the Bureau plans to adopt fee schedules for all communications uses applicable to lands under its jurisdiction and will incorporate the fee schedules into its overall communications site fee policy in a separate **Federal Register** notice.

Comments received on this proposed policy will be considered in the adoption of the final policy, notice of which will be published in the **Federal Register**.

Environmental Impact

This proposed policy would establish a fee schedule to guide the administrative process of calculating annual fees to be charged holders of authorizations for communications uses on National Forest System lands. The schedule would apply to Forest Service Regions 1 through 6 and would be incorporated into existing regional fee schedules for communications uses. Upon adoption of a final fee schedule, individual authorization holders would be notified of the changes in their annual fees.

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180); September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions." The agency's preliminary assessment is that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final policy.

Controlling Paperwork Burdens on the Public

This policy will not result in additional paperwork not already required by law or not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this rule.

This action will bring annual rental fees charged holders of authorizations for communications sites on National Forest System lands, which have been held to an artificially low amount for many years, to fair market value as required by statute and administrative direction.

The fees which would be placed in effect by this proposed policy would remove the special benefit of low rental charges enjoyed by communications site authorization holders on the Federal land over those who lease land from private landowners. The increased

revenues resulting from this fee schedule will result in increased payments to States and counties in which the National Forest System lands containing the authorized facilities are located under current statutory authorities (16 U.S.C. 500).

Moreover, this policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed policy and fee schedule is limited to that segment of the communications industry operating on National Forest System lands. There are approximately 6,000 communications site permits in effect on these Federal lands. Available records do not indicate the number of such permits held by small entities. Further, the statutory and administrative requirements to obtain fair market value for authorized uses of National Forest System lands do not provide a basis for charging lower fees to small entities. The phase-in of annual fees proposed in this notice will allow small entities to adjust the new fees over a period of time and thus minimize the risk of adverse impact on some businesses because of the magnitude of the increase in some fees.

In order to provide adequate time for public review and comment and consideration of those comments in the adoption of a final fee policy and schedule prior to the next annual fee filing, there was not sufficient time to permit review and clearance under E.O. 12291 and Federal regulations. The final policy will be submitted for review under E.O. 12291.

Dated: July 1, 1993.

George M. Leonard,

Associate Chief.

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TABLE 1.
PROPOSED FEE SCHEDULE FOR SELECTED COMMUNICATIONS SITE USES
NATIONAL FOREST SYSTEM LANDS

Type Of Communications Use	Basis of Rental Fee and Rental Fee Strata	Proposed Annual Fee	Examples of Urban Areas Served-- Communications Sites on NFS Lands
Television Broadcast	Televison Households Served in Television Markets Ranked by Area of Dominant Influence 1/		
	-750,000 households and more	$45,000 (Plus 25	Los Angeles, San Diego
	-200,000-749,999	$19,000 Percent	Albuquerque, Las Vegas, Fresno, Tucson
	-120,000-199,999	$ 6,000 From	Reno, Eugene, Boise, Bakersfield
	-50,000-119,999	$ 4,500 Space	Idaho Falls-Pocatello, Missoula
	-49,999 and less and non-ADI areas	$ 3,000 Rental Income)	Twin Falls, Flagstaff
FM Radio Broadcast	Number of Persons Aged 12 or Older In Radio Markets Ranked by Metro Survey Area 2/		
	-1,000,000 persons and more	$34,000 (Plus 25	Los Angeles, San Diego, Riverside-San Bernardino
	-400,000-999,999	$14,000 Percent	Las Vegas, Tucson, Albuquerque, Bakersfield
	-200,000-399,999	$ 5,500 From	Reno, Boise,
	-75,000-199,999	$ 4,000 Space	Santa Fe, Medford-Ashland
	-74,999 and less and non-MSA areas	$ 2,100 Rental Income)	Montrose, Craig-Forsyth, Dillon
Commercial Mobile Radio	Number of Persons Within Area Served 3/		
	500,000 persons and more	($12,000) 4/	Los Angeles, Oxnard-Ventura, San Diego Phoenix, Las Vegas, Bakersfield
	250,000-499,999	$ 7,500	Albuquerque, Salem, Reno,
	150,000-249,999	$ 5,000	Boise
	60,000-149,999	$ 2,500	Medford, Santa Fe
	59,999 and less	$ 1,200	Pocatello, Idaho Falls
Cellular Telephone	Within an SMSA: 5/	$ 7,500	Los Angeles
	Outside an SMSA:		
	-Urban or developed area	$ 5,000	Kalispell, MT, Glenwood Springs, CO
	-Rural or undeveloped area	$ 2,500	Transportation corridors

1/ Area of Dominant Influence (ADI) market rankings from Arbitron Company data for 1991-1992 reported in Broadcasting & Cable Market Place, 1992, compiled by R.R. Bowker, A Reed Reference Publishing Company, New Providence, NJ

2/ Metro Survey Area radio market rankings from Arbitron Company Fall 1991 market definitions reported in Broadcasting & Cable Market Place, 1992, compiled by R.R. Bowker, A Reed Reference Publishing Company, New Providence, NJ

3/ Based on U.S. Census Bureau estimates of population for the areas served by the facility.

4/ $12,000 or 25% of space rental, whichever is greater.

5/ SMSA: Standard Metropolitan Statistical Area

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